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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2013 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 29, 2013. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 29, 2013.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2013 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2013 supplement pamphlets and in the bound volumes of the Code.

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TITLE 43

PROFESSIONS AND BUSINESSES

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CHAPTER 1

GENERAL PROVISIONS

Sec. 43-1-2.	Appointment and general powers of division director; members and meetings of professional licensing boards; examination standards; roster of licensees; funding.	Sec. 43-1-32.	Limitations on licensure requirements for physicians and dentists; conditioning of licensing upon participation in public or private health insurance plans prohibited.
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43-1-2. Appointment and general powers of division director; members and meetings of professional licensing boards; examination standards; roster of licensees; funding.

(a)(1) There is created within the office of the Secretary of State the professional licensing boards division as successor to the office of the joint-secretary of the state examining boards. The Secretary of State is authorized and directed to appoint a director of the professional licensing boards division.

(2) Any action of the joint-secretary taken with regard to any state examining board prior to July 1, 2000, shall thereafter be deemed to be action taken by the director of the professional licensing boards division and that division director shall thereafter act in the stead of such joint-secretary and succeed to the powers and duties of the joint-secretary with regard to those state examining boards. The rights, privileges, entitlements, or duties of parties to contracts, leases, agreements, or other transactions entered into by the joint-secretary prior to July 1, 2000, shall continue to exist and shall not be impaired or diminished by reason of the succession of the division director to the powers and duties of the joint-secretary.

(b) The salary of the division director shall be fixed by the Secretary of State, and he or she shall hold office at the pleasure of the Secretary of State.

(c) The Secretary of State, notwithstanding any other provisions of law to the contrary, shall employ personnel as deemed necessary to carry out this chapter and to provide for all services required by each of the professional licensing boards and shall establish within the guidelines provided by the laws and rules and regulations of the State Personnel Board the qualifications of such personnel.

(d) The division director, with the approval of the Secretary of State, notwithstanding any other provisions of law to the contrary, shall enter into such contracts as are deemed necessary to carry out this chapter to provide for all services required by each of the professional licensing boards.

(e) The Secretary of State, notwithstanding any other provisions of law to the contrary, shall have the power to employ and shall set the qualifications and salary for a deputy division director and shall appoint executive directors as required who shall act in the absence of the division director and who shall perform such other functions of the division director under this chapter as the division director may designate. The deputy division director and executive directors as appointed shall be in the unclassified service and shall be excluded from the classified service as defined in Article 1 of Chapter 20 of Title 45.

(f) Notwithstanding any other provisions of law to the contrary, each member of the various professional licensing boards may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within the state. Any board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by members of the various professional licensing boards are subject to approval of the president or chairperson of the respective board and the division director.

(g) All meetings and hearings of the respective professional licensing boards shall be held in the capitol, at the site of the office of the respective board, or at such other site as may be requested by the chairperson or president of a professional licensing board and approved by the division director.

(h) A majority of the appointed members of a professional licensing board shall constitute a quorum for the transaction of business by that board.

(h.1) Members of a professional licensing board shall serve until the expiration of the term for which they were appointed and until their successors have been appointed and qualified unless otherwise specified under the provisions of this title.

(i) A schedule of all meetings and hearings of the various professional licensing boards shall be maintained at the office of the division director and be available for public review.

(j) The division director may establish administrative standards for the examination of applicants for licensure by the various professional

licensing boards, notwithstanding any other provisions of law to the contrary. These administrative standards may include the setting of date, time, and location of examinations, subject to the approval of the respective professional licensing boards. Notwithstanding any other provisions of law to the contrary, examination criteria, examination grading procedures, examination fees, examination passing score requirements, and other matters pertaining to the examination of applicants for licensure may be adopted by rules of the respective professional licensing boards as necessary to implement such examination standards. Examination standards, including examination criteria, grading procedures, and passing score requirements, developed in agreement or in conjunction with a national association of state boards or other related national association for the administration of a nationally recognized uniform examination may be adopted in lieu of state standards by the respective professional licensing boards.

(k) The division director shall prepare and maintain a roster containing the names and addresses of all current licensees for each of the various professional licensing boards. A copy of this roster shall be available to any person upon request at a fee prescribed by the division director sufficient to cover the cost of printing and distribution. The following shall be treated as confidential and need not be disclosed without the approval of the professional licensing board to which application is made:

(1) Applications and other personal information submitted by applicants, except to the applicant, staff, and the board;

(2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and the board;

(3) Examination questions and other examination materials, except to the staff and the board; and

(4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes.

(l) Funding for the office of the division director and the various professional licensing boards served by such office shall be contained in a common budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act." (Ga. L. 1931, p. 7, §§ 89, 89A; Code 1933, §§ 84-101, 84-102; Ga. L. 1943, p. 370, § 1; Ga. L. 1955, p. 323, § 1; Ga. L. 1975, p. 412, § 1; Ga. L. 1977, p. 758, § 1; Ga. L. 1981, p. 1898, § 1; Ga. L. 1990, p. 1965, § 1; Ga. L. 2000, p. 1706, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2010, p. 266, §§ 6, 7/SB 195; Ga. L. 2012, p. 446, § 2-64/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “State Personnel Board” for “State Personnel Administration” in subsection (c).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

43-1-5. Investigators for professional licensing boards.

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U.L. Rev. 131 (2011).

43-1-19. Grounds for refusing to grant or revoking licenses; application of Administrative Procedure Act; subpoena powers; disciplinary actions; judicial review; reinstatement; investigations; complaints; notice; failure to appear; voluntary surrender; application.

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Judicial review not precluded by issuance of letter of concern.

Immunity from civil liability provided under O.C.G.A. § 43-1-19(i) for reporting violations by licensed persons is applicable to only the professions and occupa-

tions licensed under that title. Attorneys are governed by other statutes and regulations not included in Title 43. *Jefferson v. Stripling*, 316 Ga. App. 197, 728 S.E.2d 826 (2012).

43-1-32. Limitations on licensure requirements for physicians and dentists; conditioning of licensing upon participation in public or private health insurance plans prohibited.

(a) State licensure requirements for physicians and dentists in this state shall be granted based on demonstrated skill and academic competence. Licensure approval for physicians and dentists in this state shall not be conditioned upon or related to participation in any public or private health insurance plan, public health care system, public service initiative, or emergency room coverage.

(b) The Georgia Composite Medical Board and the Georgia Board of Dentistry shall be solely responsible for the licensure of physicians and dentists, respectively, in this state. (Code 1981, § 43-1-32, enacted by Ga. L. 2012, p. 348, § 1/HB 785.)

Effective date. — This Code section became effective July 1, 2012.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, Code

Section 33-1-22, as enacted by Ga. L. 2012, p. 348, § 1, was redesignated as Code Section 43-1-32.

CHAPTER 1A

OCCUPATIONAL REGULATION LEGISLATION REVIEW

Sec.

43-1A-4. Occupational Regulation Review Council.

43-1A-4. Occupational Regulation Review Council.

(a) There is created the Georgia Occupational Regulation Review Council.

(b) The council shall consist of ten members:

- (1) The comptroller general or his or her designee;
- (2) The Secretary of State or his or her designee;
- (3) The commissioner of public health or his or her designee;
- (4) The director of the Office of Planning and Budget or his or her designee;
- (5) The commissioner of natural resources or his or her designee;
- (6) The state revenue commissioner or his or her designee;
- (7) The Commissioner of Agriculture or his or her designee;
- (8) The administrator of the “Fair Business Practices Act of 1975” or his or her designee;
- (9) The chairperson of the legislative committee of reference or that person’s designee from that committee, but only when legislation referred by such committee is being considered by the council; and
- (10) The chairperson of that standing committee of the General Assembly appointed by the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that chairperson’s designee from that committee, but only when legislation of which that presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being considered by the council.

(c) The director of the Office of Planning and Budget or his or her designee shall serve as chairperson of the council.

(d) Legislative members of the council appointed thereto pursuant to paragraphs (9) and (10) of subsection (b) of this Code section shall receive for their attendance of meetings of the council the same expense and mileage allowance authorized for legislative members of interim legislative committees. (Code 1981, § 43-1A-4, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2010, p. 376, § 1/SB 149; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2013, p. 141, § 43/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (b)(1).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 3

ACCOUNTANTS

43-3-24. Issuance of permits to practice accountancy; substantial equivalency practice privilege for nonresidents.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-3-32. Ownership of accountants’ working papers; confidentiality of communications to accountants.

Cross references. — Privileged communications generally, § 24-5-501 et seq.

CHAPTER 6

AUCTIONEERS

43-6-6. Seal.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

CHAPTER 7

BARBERS

43-7-9. General powers and duties of board.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 9

CHIROPRACTORS

43-9-12. Refusal, suspension, or revocation of licenses; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

CHAPTER 10

COSMETOLOGISTS

43-10-6. Rules and regulations as to sanitary requirements; instruction on HIV and AIDS; inspections; unsanitary condition as nuisance.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 10A

PROFESSIONAL COUNSELORS, SOCIAL WORKERS,
AND MARRIAGE AND FAMILY THERAPISTS

Sec.	Sec.
43-10A-3. Definitions.	43-10A-13. Requirements for licensure in marriage and family therapy.
43-10A-12. Requirements for licensure in social work; authorized services.	

43-10A-3. Definitions.

As used in this chapter, the term:

(1) “Advertise” means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or the causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine, or directory, or on radio or television.

(2) “Allied profession” means the practice of medicine, psychiatric nursing, psychology, or pastoral counseling.

(3) “Board” means the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists established by this chapter.

(3.1) “Commission on Rehabilitation Counselor Certification” means the national certifying agency for rehabilitation counselors as recognized by the National Commission for Certifying Agencies.

(4) “Counseling” means those techniques used to help persons learn how to solve problems and make decisions related to personal growth, vocation, family, social, and other interpersonal concerns.

(5) “Direction” means the ongoing administrative overseeing by an employer or superior of a specialty practitioner’s work. The person providing direction shall be responsible for assuring the quality of the services rendered by that practitioner and shall ensure that qualified supervision or intervention occurs in situations which require expertise beyond that of the practitioner. Direction may be provided by any person acceptable to the standards committee for that specialty in which the practitioner is working.

(6) “Division director” means the director of the professional licensing boards division. The division director shall serve as secretary to the board.

(7) “Fee” means money or anything of value, including but not limited to a salary, offered or received as compensation in return for rendering services in any specialty.

(8) “Marriage and family therapy” means that specialty which evaluates and treats emotional and mental problems and conditions, whether cognitive, affective, or behavioral, resolves intrapersonal and interpersonal conflicts, and changes perception, attitudes, and behavior; all within the context of marital and family systems. Marriage and family therapy includes, without being limited to, individual, group, couple, sexual, family, and divorce therapy. Marriage and family therapy involves an applied understanding of the dynamics of marital and family systems, including individual psychodynamics, the use of assessment instruments that evaluate marital and family functioning, designing and recommending a course of treatment, and the use of psychotherapy and counseling.

(9) “Practice a specialty” or “practice” means to offer to render for a fee or to render for a fee any service involving the application of principles, methods, or procedures of professional counseling, social work, or marriage and family therapy.

(10) “Professional counseling” means that specialty which utilizes counseling techniques based on principles, methods, and procedures of counseling that assist people in identifying and resolving personal, social, vocational, intrapersonal and interpersonal concerns; utilizes counseling and psychotherapy to evaluate, treat, and recommend a course of treatment for emotional and mental problems and conditions, whether cognitive, behavioral, or affective, provided that the counselor shall have training and experience working with people with mental illness, mental retardation, or substance abuse; administers and interprets educational and vocational assessment instruments and other tests which the professional counselor is qualified to employ by virtue of education, training, and experience; utilizes information, community resources, and goal setting for personal, social, or vocational development; utilizes individual and group techniques for facilitating problem solving, decision making, and behavior change; utilizes functional assessment and vocational planning and guidance for persons requesting assistance in adjustment to a disability or disabling condition; utilizes referral for persons who request counseling services; performs service planning; and utilizes and interprets counseling research.

(11) “Psychotherapeutic techniques” means those specific techniques involving the in-depth exploration and treatment of interpersonal and intrapersonal dynamics but shall not include the performance of those activities exclusively reserved to any other business or profession by any other chapter of this title.

(12) “Recognized educational institution” means any educational institution which grants a bachelor’s, master’s, specialist, or doctoral degree and which is recognized by an accrediting body acceptable to the board.

(13) “Social work” means that specialty which helps individuals, marriages, families, couples, groups, or communities to enhance or restore their capacity for functioning: by assisting in the obtaining or improving of tangible social and health services; by providing psychosocial evaluations, in-depth analyses and diagnoses of the nature and status of emotional, cognitive, mental, behavioral, and interpersonal problems or conditions; and by counseling and psychotherapeutic techniques, casework, social work advocacy, psychotherapy, and treatment in a variety of settings which include but are not limited to mental and physical health facilities, child and family service agencies, or private practice.

(14) “Specialty” means social work, marriage and family therapy, or professional counseling, or any combination thereof.

(15) “Supervision” means the direct clinical review, for the purpose of training or teaching, by a supervisor of a specialty practitioner’s interaction with a client. It may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation in order to promote the development of the practitioner’s clinical skills.

(16) “Supervisor” means a person who meets the requirements established by the standards committee for that specialty which is being supervised and who is either licensed under this chapter or is a psychiatrist or a psychologist.

(17) “The Commission on Accreditation for Marriage and Family Therapy Education” means the national accrediting agency for marriage and family therapy education as recognized by the United States Department of Education.

(18) “The Council on Social Work Education” means the national accrediting agency for social work education as recognized by the United States Department of Education and the Council on Postsecondary Accreditation. (Code 1981, § 43-7A-3, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1990, p. 1484, § 1; Ga. L. 1993, p. 330, § 2; Ga. L. 1994, p. 450, § 1; Ga. L. 1995, p. 1302, § 17; Ga. L. 1997, p. 452, § 1; Ga. L. 2000, p. 1706, § 9; Ga. L. 2002, p. 1479, § 1; Ga. L. 2012, p. 347, § 1/HB 434.)

The 2012 amendment, effective July 1, 2012, substituted “diagnoses” for “deter-

minations” near the middle of paragraph (13).

43-10A-7. Licensing requirement; exceptions.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-10A-12. Requirements for licensure in social work; authorized services.

(a) The education, experience, and training requirements for licensure in social work are as follows:

(1) For licensure as a master's social worker, a master's degree in social work from a program accredited by the Council on Social Work Education; and

(2) For licensure as a clinical social worker:

(A) A master's degree in social work from a program accredited by the Council on Social Work Education; and

(B) As defined by the board, three years' full-time supervised experience in the practice of social work following granting of the master's degree. Of the three years of supervised experience, only the first two must be under direction. A doctoral degree in a specialty, an allied profession, or child and family development may substitute for one year of such experience. At least one year of experience shall have occurred within two years immediately preceding application for licensure as a clinical social worker or the applicant shall have met the continuing education requirement established by the board for clinical social work during the year immediately preceding application.

(b) Licensed master's social workers may render or offer to render to individuals, marriages, couples, families, groups, organizations, governmental units, or the general public service which is guided by knowledge of social resources, social systems, and human behavior. They may provide evaluation, prevention, and intervention services which include but are not restricted to community organization, counseling, and supportive services such as administration, direction, supervision of bachelor's level social workers, consultation, research, or education. The first two years of their practice after licensure as a master's social worker shall be under direction and supervision. Thereafter, they may engage in private practice, except that those social workers whose practice includes counseling or psychotherapeutic techniques may only engage in such practice under the supervision of a duly qualified supervisor and only for such period of time as is prescribed for qualification to take the clinical social work licensing examination.

(c) Licensed clinical social workers may practice all authorized services of licensed master's social workers and may: provide supervision and direction; provide psychosocial evaluation through data collection and analyses to diagnose the nature of an individual's mental, cognitive, emotional, behavioral, and interpersonal problems or conditions; provide counseling and psychotherapy to individuals, marriages,

couples, families, and groups; interpret the psychosocial dynamics of a situation and recommend and implement a course of action to individuals, marriages, couples, families, or groups in such settings as private practice, family service and counseling agencies, health care facilities, and schools; and provide direct evaluation, casework, social work advocacy, education, training, prevention, and intervention services in situations threatened or affected by social, intrapersonal, or interpersonal stress or health impairment. (Code 1981, § 43-7A-12, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 467, § 1; Ga. L. 1990, p. 1484, §§ 4, 5; Ga. L. 1993, p. 330, § 5; Ga. L. 2012, p. 347, § 2/HB 434.)

The 2012 amendment, effective July 1, 2012, substituted “diagnose” for “determine” near the middle of subsection (c).

43-10A-13. Requirements for licensure in marriage and family therapy.

(a) The education, experience, and training requirements for licensure in marriage and family therapy are as follows:

(1) For licensure as an associate marriage and family therapist, a master’s degree in a program in marriage and family therapy or a program including a master’s degree and additional post-master’s degree course work, both of which programs shall include three courses in marriage and family studies, three courses in marriage and family therapy, three courses in human development, one course in marriage and family therapy ethics, and one course in research, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution; completion of a one-year practicum in marriage and family therapy under supervision before or after the granting of the master’s degree, which practicum shall include 500 hours of direct clinical experience in marriage and family therapy and 100 hours of supervision of such experience; and registration with the board of an acceptable contract for obtaining the post-master’s experience under direction and supervision required for licensure as a marriage and family therapist; and

(2) For licensure as a marriage and family therapist:

(A) Licensure as an associate marriage and family therapist and two years of full-time post-master’s experience or its equivalent in the practice of marriage and family therapy under direction and supervision as an associate marriage and family therapist, which shall include a minimum of 2,000 hours of direct clinical experience and 100 hours of supervision of such experience and which shall be completed within a period of not less than two years and not more than five years;

(B) A master's degree from a program in any specialty, any allied profession, applied child and family development, applied sociology, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution and shall include, as part of the degree program or as additional post-master's degree course work, at least two courses in marriage and family studies, two courses in marriage and family therapy, and, after July 1, 2000, one course in marriage and family therapy ethics; and three years' full-time post-master's experience or its equivalent under direction and supervision in the practice of any specialty, which shall include a minimum of 2,500 hours of direct clinical experience, one year of which may have been in an approved practicum before or after the granting of the master's degree which shall include a minimum of 500 hours of direct clinical experience, and two years of which shall have been in the practice of marriage and family therapy which shall include a minimum of 2,000 hours of direct clinical experience, and 200 hours of supervision of such experience all of which shall be completed within a period of not less than three years and not more than five years; or

(C) A doctorate degree from a program in any specialty, any allied profession, applied child and family development, applied sociology, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution and shall include, as part of a master's or doctoral degree program or as additional postgraduate degree course work, at least two courses in marriage and family studies, two courses in marriage and family therapy, and, after July 1, 2000, one course in marriage and family therapy ethics; two years' full-time post-master's experience under direction in the practice of marriage and family therapy which shall include a minimum of 1,500 hours of direct clinical experience, one year of which may have been in an approved internship program before or after the granting of the doctoral degree, which shall include a minimum of 500 hours of direct clinical experience, and one year of which shall have been full-time post-master's experience, which shall include a minimum of 1,000 hours of direct clinical experience; and 100 hours of supervision of such experience in the practice of marriage and family therapy, 50 hours of which may have been obtained while a student or intern in an accredited doctoral program.

(b) Persons intending to apply for licensure as a marriage and family therapist and who have completed one of the graduate degrees required for such licensure may register a contract with the board for obtaining the required post-master's experience under direction and supervision.

(c) Associate marriage and family therapists may only use the title “associate marriage and family therapist” and may practice marriage and family therapy only under direction and supervision and only for a period not to exceed five years while obtaining the post-master’s experience required for licensure as a marriage and family therapist. (Code 1981, § 43-7A-13, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1988, p. 580, § 1; Ga. L. 1989, p. 825, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 1995, p. 874, § 1; Ga. L. 1996, p. 843, § 3; Ga. L. 1997, p. 452, § 2; Ga. L. 2002, p. 415, § 43; Ga. L. 2013, p. 141, § 43/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subparagraph (a)(2)(c).

CHAPTER 11

DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

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ARTICLE 1

GENERAL PROVISIONS

43-11-1. Definitions.

As used in this chapter, the term:

- (1) “Accredited dental college” and “accredited dental school” or “accredited school of dentistry” means a dental school, college, or university with an education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.
- (2) “Accredited dental hygiene school” means a dental hygiene education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.
- (3) “Advanced dental education program” means an accredited dental advanced specialty education program or accredited dental education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.
- (4) “Board” means the Georgia Board of Dentistry.
- (5) “Conscious sedation” means a minimally depressed level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or combination thereof. A patient whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of conscious sedation. The use of nitrous oxide is not considered conscious sedation for purposes of this chapter.
- (6) “Dentistry” means the evaluation, diagnosis, prevention, or treatment, or any combination thereof, whether using surgical or nonsurgical procedures, of diseases, disorders, or conditions, or any combination thereof, of the oral cavity, maxillofacial area, or the adjacent and associated structures, or any combination thereof, and their impact on the human body provided by a dentist, within the scope of his or her education, training, and experience, in accordance

with the ethics of the profession and applicable law, including, but not limited to, the acts specified in Code Section 43-11-17.

(6.1) “Executive director” means the executive director appointed by the board pursuant to Code Section 43-11-2.1.

(7) “General anesthesia” means an induced state of depressed consciousness, or an induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually and independently maintain an airway and respond purposefully to physical stimulation or verbal command, and produced by a pharmacological or nonpharmacological method or combination thereof. For purposes of this chapter, “general anesthesia” includes deep sedation.

(8) “Instructor” means either a dentist or a dental hygienist whom the state board has granted a teacher’s or instructor’s license pursuant to Code Section 43-11-42.

(9) “Licensed dental hygienist” means a dental hygienist licensed and in good standing in this state pursuant to this chapter.

(10) “Licensed dentist” means a dentist licensed and in good standing in this state pursuant to this chapter.

(11) “Training clinic” means a clinic operated as a nonprofit facility by an accredited dental college, advanced dental education program, or accredited dental hygiene school primarily to train students or residents of such college, program, or school. (Code 1981, § 43-11-1, enacted by Ga. L. 1987, p. 932, § 1; Ga. L. 1999, p. 234, § 1; Ga. L. 2004, p. 720, § 1; Ga. L. 2008, p. 530, § 1/SB 363; Ga. L. 2013, p. 192, § 2-1/HB 132.)

The 2013 amendment, effective July 1, 2013, added paragraph (6.1).

43-11-2.1. Administrative transfer of board to Department of Community Health; appointment of executive director; powers, duties, and functions of executive director; location of meetings and hearings; hiring of investigators; general provisions.

(a) On and after July 1, 2013, the board shall not be under the jurisdiction of the Secretary of State but shall be a division of the Department of Community Health; provided, however, that except as otherwise specifically provided, the board shall be autonomous from the Board of Community Health and the commissioner of community health and shall exercise its quasi-judicial, rule-making, licensing, or policy-making functions independently of the department and without approval or control of the department and prepare its budget and

submit its budgetary requests, if any, through the department. Such transfer shall in no way affect any existing obligations, liabilities, or rights of the board, as such existed on June 30, 2013. The board shall have with respect to all matters within the jurisdiction of the board as provided under this chapter the powers, duties, and functions of professional licensing boards as provided in Chapter 1 of this title.

(b) The board shall appoint and fix the compensation, which shall be approved by the Board of Community Health, of an executive director of such board who shall serve at the pleasure of the board. Any reference in this chapter to the executive director shall mean the executive director appointed pursuant to this subsection. The executive director shall have those duties and powers prescribed by the board and any power, duty, and functions granted to the division director with respect to professional licensing boards under Chapter 1 of Title 43 but shall not be subject to any approval or other powers exercised by the Secretary of State.

(c) Meetings and hearings of the board shall be held at the site of the office of the board or at such other site as may be specified by the president of the board. A majority of the members of the board shall constitute a quorum for the transaction of business of the board.

(d) The board, through the executive director, may hire investigators for the purpose of conducting investigations. Any person so employed, if a P.O.S.T. certified peace officer under Chapter 8 of Title 35, shall be considered to be a peace officer and shall have all powers, duties, and status of a peace officer of this state; provided, however, that such investigators shall only be authorized, upon written approval of the executive director, notwithstanding Code Sections 16-11-126 and 16-11-129, to carry firearms in the performance of their duties and exercise the powers of arrest in the performance of their duties.

(e) The venue of any action involving members of the board shall be the county in which is found the primary office of the governmental entity of which the defendant is an officer. The executive director of the board shall not be considered a member of the board in determining the venue of any such action and no court shall have jurisdiction of any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction.

(f) The board shall give point credit to veterans in the same manner as required under Code Sections 43-1-9 through 43-1-13.

(g) Initial judicial review of a final decision of the board shall be held solely in the superior court of the county of domicile of the board.

(h) The executive director shall make a report no later than December 31 of each year covering the activities of the board for that calendar

year, which shall be made available to any member of the General Assembly upon request.

(i) The executive director shall prepare and maintain a roster containing the names and addresses of all current dental and dental hygiene licensees. A copy of this roster shall be available to any person upon request at a fee prescribed by the executive director sufficient to cover the cost of printing and distribution.

(j) The executive director, with the approval of the board, notwithstanding any other provisions of law to the contrary, shall enter into such contracts as are deemed necessary to carry out this chapter to provide for all services required of the board.

(k) It shall be the duty of the executive director to keep minutes and a record of all acts of the board and such other books and records as may be necessary to show the acts of the board. (Code 1981, § 43-11-2.1, enacted by Ga. L. 2013, p. 192, § 2-2/HB 132.)

Effective date. — This Code section became effective July 1, 2013.

43-11-5. Duty of members to notify executive director of address.

Each member of the board, upon the receipt of his or her commission, shall file with the executive director his or her post office address and thereafter a notice of any change thereof. Any notice mailed to such address by the executive director shall be deemed to comply with the requirements of this chapter as notice to him or her. (Ga. L. 1920, p. 132, § 20; Code 1933, § 84-703; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-3/HB 132.)

The 2013 amendment, effective July 1, 2013, in the first sentence of this Code section, twice substituted “executive di-

rector” for “division director”, and substituted “thereof” for “therein”.

43-11-6. Expense and mileage allowances; other reimbursements.

Each member of the board shall receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within this state. Each board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day’s service outside of the state as a board

member, such member shall receive actual expenses as an expense allowance as well as the mileage allowance for the use of a personal car equal to that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by board members are subject to approval of the president and executive director. Out-of-state travel by board members must be approved by the board president and the executive director. (Ga. L. 1920, p. 132, § 22; Ga. L. 1921, p. 179, § 3; Code 1933, § 84-713; Ga. L. 1955, p. 325, § 1; Ga. L. 1958, p. 113, § 1; Ga. L. 1963, p. 273, § 2; Ga. L. 1974, p. 1223, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 2; Ga. L. 2013, p. 192, § 2-4/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.”

43-11-7. Powers and duties of board.

The board shall perform such duties and possess and exercise such powers, relative to the protection of the public health and the control and regulation of the practice of dentistry as this chapter prescribes and confers upon it. The board shall also have the following powers and duties:

(1) To adopt, amend, and repeal rules and regulations to carry out the performance of its duties as set forth in this chapter;

(2) To examine all applicants for licenses to practice dentistry who are entitled under this chapter to be so examined and issue licenses to practice dentistry according to this chapter;

(3) To make all necessary bylaws and rules for the governance of the board and the performance of its duties;

(4) To have and use a common seal bearing the name “Georgia Board of Dentistry” by which the board shall authenticate the acts of the board;

(5) To establish rules regarding licensure including, but not limited to, inactive status as the board deems appropriate;

(6) To issue, deny, or reinstate the licenses or permits of duly qualified applicants for licensure or permits under this chapter;

(7) To revoke, suspend, issue terms and conditions, place on probation, limit practice, fine, require additional dental training, require dental community service, or otherwise sanction licensees, permit holders or others over whom the board has jurisdiction under this chapter;

(8) To employ an executive director and such other staff as the board may deem necessary and appropriate to implement this chapter and provide support and who shall be subject to the same confidentiality requirements of the board;

(9) To keep a docket of public proceedings, actions, and filings;

(10) To set its office hours;

(11) To set all reasonable fees by adoption of a schedule of fees approved by the board. The board shall set such fees sufficient to cover costs of operation;

(12) To adopt necessary rules concerning proceedings, hearings, review hearings, actions, filings, depositions, and motions related to uncontested cases;

(13) To initiate investigations for purposes of discovering violations of this chapter;

(14) To administer oaths, subpoena witnesses and documentary evidence including dental records, and take testimony in all matters relating to its duties;

(15) To conduct hearings, reviews, and other proceedings according to Chapter 13 of Title 50;

(16) To conduct investigative interviews;

(17) To issue cease and desist orders to stop the unlicensed practice of dentistry or other professions licensed or permitted under this chapter and impose penalties for such violations;

(18) To refer cases for criminal prosecution or injunctive relief to appropriate prosecuting attorneys or other law enforcement authorities of this state, another state, or the United States;

(19) To release investigative or applicant files to another enforcement agency or lawful licensing authority in another state;

(20) To sue and be sued in a court of competent jurisdiction;

(21) To enter into contracts; and

(22) To accept donations, contributions, grants, or bequests of funds or property. (Code 1933, § 84-704.1, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 4; Ga. L. 2013, p. 192, § 2-5/HB 132.)

The 2013 amendment, effective July 1, 2013, in the introductory paragraph of this Code section, substituted “also have the following powers and duties: (1) To

adopt, amend, and repeal” for “have the power and authority to promulgate”; and added paragraphs (2) through (22).

43-11-8. Board to examine applicants, issue licenses, make by-laws and rules; seal; books and records.

Reserved. Repealed by Ga. L. 2013, p. 192, § 2-6/HB 132, effective July 1, 2013.

Editor's notes. — This Code section § 1; Ga. L. 1979, p. 853, § 1; Ga. L. 2000, was based on Ga. L. 1920, p. 132, § 4; p. 1706, § 19. Code 1933, § 84-707; Ga. L. 1976, p. 484,

43-11-11. Gathering of census data on practicing dentists and dental hygienists; standard form.

(a) The board shall gather census data on each dentist and dental hygienist in this state. Such census data shall be obtained from each dentist and dental hygienist as part of the license renewal process on a biennial basis. Renewal of a license shall be contingent on completion and provision of a census questionnaire to the board. Failure by a licensee to submit the census questionnaire shall authorize the board to refuse to grant a license renewal, revoke a license, or discipline a licensee under Code Section 43-11-47.

(b) The board shall by regulation establish a standard form for the collection of census data. Such form and the census data obtained shall be available for dissemination to any member of the public.

(c) The standard form shall at a minimum request the following information from dentists renewing their license:

(1) The dentist's age and gender;

(2) Each location identified by ZIP Code in which the dentist operates a private dental practice or practices dentistry;

(3) Whether the dentist is a specialist and the specialty in which the dentist is engaged; and

(4) Whether the dentist practices dentistry full time, which shall mean 30 or more hours per week, or part time, which shall mean less than 30 hours per week.

(d) The standard form shall at a minimum request the following information from dental hygienists renewing their license:

(1) The dental hygienist's age and gender;

(2) Each location identified by ZIP Code in which the dental hygienist provides treatment services; and

(3) Whether the dental hygienist provides treatment full time, which shall mean 30 or more hours per week, or part time, which shall mean less than 30 hours per week. (Ga. L. 1920, p. 132, § 20;

Code 1933, § 84-715; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 5; Ga. L. 2013, p. 192, § 2-7/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “The board may, from time to time, through its members or other suitable persons, take a census of all practicing dentists and dental hygienists of any locality, city, or county in the state

when it may consider it necessary for the purpose of carrying out this chapter; the board may at any time cause the names of all licensed dentists and dental hygienists in any locality, city, or county to be posted or published; and the board is authorized to pay for taking such census and posting or publishing such names.”

43-11-12. Public inspection of board records; nondisclosure of confidential records.

It shall be the duty of the executive director to keep at his or her office the minutes of the board, together with all the books and records of the board, which shall be public records open to inspection by the public except on Sundays and legal holidays. The following shall be treated as confidential and need not be disclosed without prior approval of the board:

- (1) Applications and other personal information submitted by applicants, except to the applicant, staff, and the board;
- (2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and board;
- (3) Examination questions and other examination materials, except to the staff and the board; and
- (4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in the official board minutes. (Ga. L. 1920, p. 132, § 5; Code 1933, § 84-708; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 6; Ga. L. 2000, p. 1706, § 19; Ga. L. 2011, p. 99, § 67/HB 24; Ga. L. 2013, p. 192, § 2-8/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “It shall be the duty of the division director to keep at his or her office the minutes of the board, together with all the books and records of the board, which books and records shall, except as provided in subsection (k) of

Code Section 43-1-2, be public records open to inspection by the public except on Sundays and legal holidays.”

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-11-13. Service of orders and subpoenas of board; service of notice or process on executive director.

(a) It shall be the duty of the several sheriffs, their deputies, and the constables to serve any and all lawful orders and subpoenas of the board. The board may also appoint any other person to serve any decision, order, or subpoena of the board, and it shall be that person's duty to execute the same.

(b) All orders and processes of the board shall be signed and attested by the executive director or the president of the board in the name of the board with its seal attached; and any notice or legal process necessary to be served upon the board may be served upon the executive director. (Ga. L. 1920, p. 132, §§ 18, 19; Code 1933, §§ 84-719, 84-720; Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 1; Ga. L. 1999, p. 234, § 7; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-9/HB 132.)

The 2013 amendment, effective July 1, 2013, in subsection (a), substituted "and it shall be that person's duty" for "which person's duty it shall be" in the second sentence; and, in subsection (b), substi-

tuted "executive director or the president of the board" for "division director" near the middle, and substituted "executive director" for "division director" at the end.

43-11-21.1. General anesthesia.

(a) No dentist shall administer general anesthesia on an outpatient basis unless such dentist has been issued a permit by the board under the conditions specified in this Code section. Such permit shall be subject to biennial renewal at the time the dentist is required to renew his or her license to practice dentistry. It shall be the responsibility of the dentist to provide such information as the board may require and to pay the separate initial issuance and renewal fees for the permit as may be established by the board.

(b) No dentist shall be issued a permit under this Code section nor have such permit renewed unless the board has received satisfactory evidence that such dentist:

(1)(A) Has successfully completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level at an institution accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency or by a nationally recognized health care accreditation body for hospitals; or

(B) Is a diplomate of the American Board of Oral and Maxillofacial Surgery, is a member of the American Association of Oral and Maxillofacial Surgeons, or is a fellow of the American Dental Society of Anesthesiology;

(2) Utilizes a properly equipped facility for the administration of general anesthesia, including physical plant and equipment which has been evaluated and certified by an on-site examination; and

(3) Has demonstrated to the satisfaction of the board or any designee thereof proficiency in administering general anesthesia on a patient or patients in the dentist's office in a safe and effective manner.

(c) In enforcing the provisions of this Code section, the board is authorized to designate qualified persons to perform the on-site examination and is further authorized to provide by rule or regulation for standards for physical plant, equipment, and personnel to be utilized in the administration of general anesthesia.

(d)(1) This Code section shall not prohibit a person who is duly licensed to practice medicine in this state and who is a member of the anesthesiology staff of an institution classified as a hospital and issued a permit as an institution under Code Section 31-7-1 from administering general anesthesia in a dental facility, except that such anesthesiologist shall remain on the premises of the dental facility until any patient given a general anesthetic by such anesthesiologist is stabilized and has regained consciousness.

(2) This Code section shall not prohibit a person who is duly licensed as a certified registered nurse anesthetist in this state from administering general anesthesia in a dental facility, provided that such anesthesia is administered under the direction and responsibility of a dentist duly permitted under this Code section and that such nurse anesthetist shall remain on the premises of the dental facility until any patient given a general anesthetic by such nurse anesthetist is stabilized and has regained consciousness.

(e) The board or its authorized designee may, upon reasonable notice, conduct an on-site inspection of the facility, equipment, and personnel of a dentist issued a permit under this Code section to determine if the standards of paragraph (2) of subsection (b) of this Code section are being maintained.

(f) The board may, upon proper application, grant a provisional permit to any dentist who meets the requirements of subparagraph (b)(1)(A) or (b)(1)(B) of this Code section, but such permit shall expire six months after its issuance or upon the board's determination by site visit that the requirements of paragraph (2) or (3) of subsection (b) of this Code section have not been met, whichever occurs earlier. The provisional permit may be renewed once, at the discretion of the board, for a period not to exceed six months following the original expiration date.

(g) A permit issued under this Code section may be revoked or not renewed if the board determines that the dentist holding such permit

no longer meets any requirement of subsection (b) of this Code section. The board shall provide notice and opportunity for hearing under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” in any case in which it revokes or refuses to renew a permit, provided that summary action regarding such permit shall be authorized under Code Section 50-13-18. (Code 1981, § 43-11-21.1, enacted by Ga. L. 1987, p. 932, § 3; Ga. L. 1999, p. 234, § 12; Ga. L. 2012, p. 337, § 9/SB 361; Ga. L. 2013, p. 141, § 43/HB 79.)

The 2012 amendment, effective July 1, 2012, substituted “or its successor agency, or by a nationally recognized health care accreditation body for hospitals” for “, the Joint Commission on Accreditation of Hospitals, or their respec-

tive successor agencies” at the end of subparagraph (b)(1)(A).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (b)(1)(A).

ARTICLE 2

LICENSES FOR THE PRACTICE OF DENTISTRY

43-11-40. Qualification of applicants; criminal background check.

(a)(1) Applicants for a license to practice dentistry must have received a doctor of dental surgery (D.D.S.) degree or a doctor of dental medicine (D.M.D.) degree from a dental school approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited must comply with the following requirements in order to submit an application for licensure:

(A) Successful completion at an accredited dental school approved by the board of the last two years of a pre-doctoral program and receipt of the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school receiving a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant’s educational and personal qualifications for licensure.

(3) In order to be granted a license under this Code section, all applicants must pass a clinical examination approved by the board

and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(b) All applications to the board for a license shall be made through the executive director, who shall then submit all such applications to the board.

(c) Subject to the provisions of subsection (a) of Code Section 43-11-47, applicants who have met the requirements of this Code section shall be granted licenses to practice dentistry.

(d) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check. (Ga. L. 1920, p. 132, § 7; Code 1933, § 84-709; Ga. L. 1949, p. 1367, § 4; Ga. L. 1963, p. 273, § 1; Ga. L. 1972, p. 843, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 4; Ga. L. 1987, p. 932, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 720, § 4; Ga. L. 2012, p. 1081, § 1A/SB 338; Ga. L. 2013, p. 192, § 2-10/HB 132.)

The 2012 amendment, effective July 1, 2012, substituted “and receipt of” for “leading to” near the middle of subparagraph (a)(1)(A).

1, 2013, inserted “pre-doctoral” in subparagraph (a)(1)(A); and substituted “executive director” for “division director” in subsection (b).

The 2013 amendment, effective July

43-11-41. Application for provisional license to practice dentistry by credentials; procedure; criminal background check; expiration and revocation of license.

(a)(1) Applicants for a provisional license to practice dentistry by credentials must have received a doctor of dental surgery (D.D.S.) degree or a doctor of dental medicine (D.M.D.) degree from a dental school approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any. Applicants must have been in full-time clinical practice, as defined by rules and regulations established by the board; full-time faculty, as defined by board rule and regulation; or a combination of both for the five years immediately preceding the date of the application and must hold an active dental license in good standing from another state. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited

must comply with the following requirements in order to submit an application for provisional licensure by credentials:

(A) Successful completion at an accredited dental school approved by the board of the last two years of a pre-doctoral program and receipt of the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for provisional licensure.

(3) In order to be granted a provisional license under this Code section, all applicants must have passed a clinical examination given by a state or regional testing agency approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(4) The board may establish additional licensure requirements by rule and regulation.

(b) All applications to the board for a provisional license by credentials shall be made through the executive director, who shall then submit all such applications to the board. The fee for provisional licensure by credentials shall be paid to the executive director and shall be in an amount established by the board.

(c) Subject to the provisions of subsection (a) of Code Section 43-11-47, an applicant who has met the requirements of this Code section shall be granted a provisional license to practice dentistry, which shall be valid for two years from the date it is issued and may be renewed subject to the approval of the board.

(d) Application for a provisional license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for provisional licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(e) Upon receipt of license, the applicant by credentials must establish active practice, as defined by rules and regulations of the board, in

this state within two years of receiving such license under this Code section or the license shall be automatically revoked. (Code 1981, § 43-11-41, enacted by Ga. L. 2004, p. 720, § 5; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2013, p. 192, § 2-11/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “pre-doctoral program and receipt of” for “program leading to” in subparagraph (a)(1)(A); and substituted “executive director” for “division director” twice in subsection (b).

43-11-43. Fees.

Each person applying for examination for a license to practice dentistry shall, at the time of making his or her application, pay to the executive director a fee to be set by the board. Each person applying for the renewal of a license or authority to practice dentistry or for the establishment of a license or authority that has been lost shall, at the time of making his or her application, pay to the executive director a fee to be set by the board. Such fee shall cover the entire service for granting or issuing licenses to practice dentistry. (Ga. L. 1920, p. 132, § 22; Ga. L. 1921, p. 179, § 3; Code 1933, § 84-713; Ga. L. 1955, p. 325, § 1; Ga. L. 1958, p. 113, § 1; Ga. L. 1963, p. 273, § 2; Ga. L. 1974, p. 1223, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 15; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-12/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “executive director” for “division director” twice in this Code section.

43-11-46. Renewal of registration; cardiopulmonary resuscitation qualification.

(a) Every person licensed by the board to practice dentistry shall register biennially on the renewal date set by the board and shall pay to the executive director a registration fee which shall be set by the board. The board shall provide for penalty fees for late registration.

(b) The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only in the discretion of the board. The board may restore and reissue a license to practice dentistry pursuant to this chapter under any terms or conditions that it may deem appropriate.

(c) After 1988, as a prerequisite for license renewal, dentists shall furnish satisfactory evidence of current certification in cardiopulmonary resuscitation as may be defined by rule or regulation of the board. (Ga. L. 1920, p. 132, § 9; Ga. L. 1921, p. 179, § 2; Code 1933, § 84-711; Ga. L. 1937, p. 627, § 2; Ga. L. 1958, p. 25, § 1; Ga. L. 1963, p. 273, § 3; Ga. L. 1974, p. 1223, § 3; Code 1933, § 84-725, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 6; Ga. L. 1996, p. 226, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-13/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “board and shall pay to the executive director” for “division director and shall pay to the division director” in subsection (a).

43-11-47. Refusal to grant, or revocation of, licenses; disciplining licensees; subpoenas; judicial review; investigations; immunity; failure to appear; voluntary surrender.

(a) The board shall have the authority to refuse to grant a license to an applicant or to revoke the license of a dentist licensed by the board or to discipline a dentist licensed under this chapter or any antecedent law upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter or in the rules and regulations issued by the board, pursuant to specific statutory authority; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant’s qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of dentistry or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice dentistry; or made a false statement or deceptive annual registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this subsection, the term “felony” shall include any offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere; and, as used in this subsection, the term “conviction” shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought. Any licensee who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony shall be required to notify the board of conviction within ten days of the conviction. The failure to notify the board of a conviction shall be considered grounds for revocation of his or her license;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

- (A) A plea of nolo contendere was entered to the charge;
- (B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or
- (C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42 or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice dentistry revoked, suspended, or annulled by any lawful licensing dental authority other than the board; or had other disciplinary action taken against him or her by any lawful licensing dental authority other than the board; or was denied a license by any lawful licensing dental authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any lawful licensing dental authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice dentistry, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of dentistry but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing dental practice;

(7)(A) Engaged in the practice of dentistry as an employee of any individual not licensed to practice dentistry in this state or engaged in the practice of dentistry as an officer or employee of any corporation other than one organized and existing pursuant to Chapter 10 of Title 14, "The Georgia Professional Association Act," or Chapter 7 of Title 14, the "Georgia Professional Corporation Act," or engaged in the practice of dentistry as an employee, manager, or member of any limited liability company organized and existing pursuant to Chapter 11 of Title 14 or a limited liability partnership pursuant to Chapter 8 of Title 14 other than one in which all members are licensed dentists and all professional services and professional judgment decisions are delivered by and made by licensed dentists, except as a licensed dentist or an intern or resident of a hospital or teaching institution licensed by this state.

(B) Possession of an ownership interest of a deceased licensed dentist in a limited liability company which is wholly owned by licensed dentists as described in subparagraph (A) of this paragraph shall not constitute a violation of that subparagraph if that interest is transferred to another licensed dentist member or redeemed by the limited liability company within six months after the date of death of that licensed dentist member;

(8) Reserved;

(9) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice dentistry or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(10) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of dentistry, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(11) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(12) Displayed an inability to practice dentistry with reasonable skill and safety to patients or has become unable to practice dentistry with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition, or by reason of displaying habitual intoxication, addiction to, or recurrent personal misuse of alcohol, drugs, narcotics, chemicals, or any other type of similar substances. In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by physicians designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. Every person who shall accept the privilege of practicing dentistry in this state, or shall file an application for a license to practice dentistry in this state, shall be deemed to have given that person's consent to submit to such mental

or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure is due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing dentistry under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin the practice of dentistry with reasonable skill and safety to patients;

(13) Reserved;

(14) Engaged in the excessive prescribing or administering of drugs or treatment or the use of diagnostic procedures which are detrimental to the patient as determined by the customary practice and standards of the local community of licensees; or knowingly prescribed controlled drug substances or any other medication without a legitimate dental purpose; or knowingly overprescribed controlled drug substances or other medication, in light of the condition of the patient at the time of prescription; or

(15) Knowingly made any fraudulent, misleading, or deceptive statement in any form of advertising or made any statement in any advertisement concerning the quality of the dental services rendered by that dentist or any dentist associated with him or her. For purposes of this paragraph, "advertising" shall include any information communicated in a manner designed to attract public attention to the practice of the licensee.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by the board and summary suspension of a license are adopted and incorporated by reference into this chapter.

(c) For purposes of this Code section, the board may obtain, and is authorized to subpoena, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license; or

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this chapter.

(h)(1) The executive director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as he or she or the board or any district attorney may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The executive director, the president of the board, or the appointed representative of either may issue subpoenas to compel such access upon a determination that reasonable grounds exist for the belief that a violation of this chapter or any other law relating to the practice of dentistry may have taken place. Upon approval of the board, any person properly conducting an investigation on behalf of the board shall have access to and shall have the right to examine the physical premises of a dental practice.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the executive director, with the board retaining the right to have access at any time to such records. No part

of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to any law enforcement agency or prosecuting attorney or to another enforcement agency or lawful licensing authority.

(3) All records relating to any patient of a licensee who is the subject of a board inquiry shall be admissible at any hearing held to determine whether a violation of this chapter has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a patient shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a dentist, dental hygienist, or dental assistant or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a dentist or a dental hygienist shall be immune from civil and criminal liability for so testifying.

(j) Neither a denial of a license on grounds other than those enumerated in subsection (a) of this Code section nor the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests.

(k) If any licensee or applicant fails to appear at any hearing after reasonable notice, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended

decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee or applicant by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked “unclaimed” or “refused” or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the executive director shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the executive director shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, limited liability companies, corporations, or other associations of any kind whatsoever.

(n) All subpoenas issued pursuant to the authority granted in this chapter shall be subject to the general rules of law with respect to distance, tender of fees and expenses, and protective orders; provided, further, any motion made with respect thereto shall be made to and passed on by a judge of the superior court of the county of residence of the person to whom the subpoena is directed. (Ga. L. 1920, p. 132, § 13; Code 1933, § 84-9908; Ga. L. 1937, p. 627, § 1; Ga. L. 1958, p. 25, § 2; Ga. L. 1972, p. 843, § 4; Ga. L. 1974, p. 532, § 1; Ga. L. 1974, p. 1223, § 5; Code 1933, § 84-724, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1978, p. 1760, § 1; Ga. L. 1979, p. 853, § 2; Ga. L. 1983, p. 1389, § 6; Ga. L. 1984, p. 22, § 43; Ga. L. 1987, p. 932, § 7; Ga. L. 1988, p. 13, § 43; Ga. L. 1993, p. 123, § 26; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 226, § 3; Ga. L. 1999, p. 234, § 17; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-14/HB 132.)

The 2013 amendment, effective July 1, 2013, added the second and third sentences of paragraph (a)(3); in paragraphs (h)(1), (h)(2), and twice in subsection (k), substituted “executive director” for “division director”; in paragraph (h)(1), inserted “or any district attorney” near the middle of the first sentence and substi-

tuted “The executive director, the president of the board, or the appointed representative of either” for “The division director or his or her appointed representative” in the third sentence; and, in paragraph (h)(2), inserted “any law enforcement agency or prosecuting attorney or to” in the second sentence.

43-11-48. Initiation of proceedings for violation of chapter; records.

(a) Proceedings under this chapter may be initiated by the board upon its own motion or upon receipt of a signed, written complaint. A

board member who forwards a complaint to the attention of the board shall not participate in any further disciplinary proceedings with respect to such applicant or licensee. Disposition of “contested cases,” within the meaning of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” shall be governed by Chapter 13 of Title 50.

(b) A record of all hearings, decisions, and orders shall be kept for the board by the executive director. (Ga. L. 1920, p. 132, § 16; Code 1933, § 84-716; Ga. L. 1937, p. 627, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 7; Ga. L. 1983, p. 1389, § 7; Ga. L. 1984, p. 22, § 43; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-15/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “executive director” for “division director” in subsection (b).

43-11-52. Volunteers in dentistry and dental hygiene; special licensing; construction.

(a) This Code section shall be known and may be cited as the “Georgia Volunteers in Dentistry and Dental Hygiene Act.”

(b) Notwithstanding any other provision of law, the board shall issue a special license to qualifying dentists and dental hygienists under the terms and conditions set forth in this Code section and pursuant to requirements which may be set forth in the rules and regulations of the board. The special license shall only be issued to a person who:

(1) Is retired from the practice of dentistry or dental hygiene and not currently engaged in such practice either full time or part time and has, prior to retirement, maintained full unrestricted licensure in good standing in dentistry or dental hygiene in any state; or

(2) Is currently licensed to practice dentistry or dental hygiene in any licensing jurisdiction in the United States and whose license is unrestricted and in good standing.

As used in this subsection, the term “unrestricted” means that no restrictions have been placed on the applicant’s license by any board, no sanctions or disciplinary actions have been imposed by any board on the applicant, and the applicant is not under probation or suspension by any board.

(c) The special licensee shall be permitted to practice dentistry or dental hygiene only in the noncompensated employ of public agencies or institutions, not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which provide dentistry or dental hygiene services only to indigent patients in areas which are underserved by dentists or dental hygienists or critical need population areas of the state, as determined by the board, or pursuant to Article 8

of Chapter 8 of Title 31. The practice of dental hygiene by a dental hygienist awarded a special license under this Code section shall be governed by Code Section 43-11-74.

(d) The person applying for the special license under this Code section shall submit to the board a notarized statement from the employing agency, institution, corporation, association, or health care program on a form prescribed by the board, whereby he or she agrees unequivocally not to receive compensation for any dentistry or dental hygiene services he or she may render while in possession of the special license.

(e) The examination by the board, any application fees, and all licensure and renewal fees may be waived for the holder of the special license under this Code section.

(f) If, at the time application is made for the special license, the dentist or dental hygienist is not in compliance with the continuing education requirements established by the board for dentists or dental hygienists in this state, the dentist or dental hygienist may be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(g)(1) Except as provided for in paragraph (2) of this subsection, the liability of persons practicing dentistry or dental hygiene under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1.

(2) The liability of persons practicing dentistry or dental hygiene pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section shall be governed by the provisions of such article.

(h) This Code section, being in derogation of the common law, shall be strictly construed.

(i) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check. (Code 1981, § 43-11-52, enacted by Ga. L. 2001, p. 329, § 1; Ga. L. 2002, p. 639, § 1; Ga. L. 2004, p. 720, § 8; Ga. L. 2005, p. 1493, § 3/HB 166; Ga. L. 2008, p. 354, § 4/HB 1222; Ga. L. 2012, p. 1081, § 1/SB 338.)

The 2012 amendment, effective July 1, 2012, in subsection (b), substituted “who: (1) Is retired” for “who is retired”, added “; or” and paragraph (2), and sub-

stituted “any board” for “the board” three times.

ARTICLE 3

DENTAL HYGIENISTS

43-11-70. Examination requirement; issuance of license; posting license.

No person shall practice as a dental hygienist in this state until such person has passed a written and a clinical examination conducted or approved by the board. The fee for such examination shall be paid to the executive director and shall be in an amount established by the board. The board shall issue licenses and license certificates as dental hygienists to those persons who have passed the examination in a manner satisfactory to the board, and the license certificate shall be posted and displayed in the place in which the hygienist is employed. (Ga. L. 1927, p. 250, § 5; Code 1933, § 84-1009; Ga. L. 1949, p. 1192, § 2; Ga. L. 1963, p. 438, § 1; Code 1933, § 84-726, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 720, § 9; Ga. L. 2013, p. 192, § 2-16/HB 132.)

The 2013 amendment, effective July 1, 2013, in this Code section, substituted “executive director” for “division director” in the second sentence, and substituted “and the license” for “which license” in the third sentence.

43-11-71.1. Application for license to practice dental hygiene by credentials; procedure; criminal background check; expiration of license.

(a)(1) Applicants for a license to practice dental hygiene by credentials must have received a dental hygiene degree from a dental hygiene school or program accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any, and approved by the board. Applicants must also provide proof of full-time clinical practice, as defined by the board; full-time faculty practice, as defined by the board; or a combination of both for the last two preceding years and hold an active dental hygiene license in good standing from another state.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant’s educational and personal qualifications for licensure.

(3) In order to be granted a license under this Code section, all applicants must have passed a clinical examination given by a state or regional testing agency approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as

they relate to the practice of dental hygiene as established or approved by the board, which shall be administered in the English language.

(4) The board may establish additional licensure requirements by rule and regulation.

(b) All applications to the board for a license by credentials shall be made through the executive director, who shall then submit all such applications to the board. The fee for licensure by credentials shall be paid to the executive director and shall be in an amount established by the board.

(c) Subject to the provisions of Code Section 43-11-72, an applicant who has met the requirements of this Code section shall be granted a license to practice as a dental hygienist.

(d) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(e) Upon receipt of license, the applicant by credentials must establish active practice, as defined by rules and regulations of the board, in this state within two years of receiving such license under this Code section or the license shall be automatically revoked. (Code 1981, § 43-11-71.1, enacted by Ga. L. 2004, p. 720, § 11; Ga. L. 2005, p. 60, § 43; Ga. L. 2013, p. 192, § 2-17/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “executive director” for “division director” twice in subsection (b).

43-11-73. Renewal; cardiopulmonary resuscitation qualification.

(a) Every person licensed by the board to practice dental hygiene shall register biennially on the renewal date set by the executive director and shall pay to the executive director a registration fee which shall be set by the board. The board shall provide for penalty fees for late registration.

(b) The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only in the discretion of the board. The board may restore and reissue a license to practice dental hygiene pursuant to this chapter under any terms or conditions that it may deem appropriate.

(c) After 1988, as a prerequisite for license renewal, dental hygienists shall furnish satisfactory evidence of current certification in cardiopulmonary resuscitation, as may be defined by rule or regulation of the board. (Code 1981, § 43-11-73, enacted by Ga. L. 1987, p. 932, § 8; Ga. L. 1996, p. 226, § 4; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-18/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “executive director” for “division director” twice in the first sentence of subsection (a).

43-11-74. Direct supervision required; scope of duties; exceptions to required supervision for dental screenings.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 14

ELECTRICAL CONTRACTORS, PLUMBERS,
CONDITIONED AIR CONTRACTORS,
LOW-VOLTAGE CONTRACTORS,
AND UTILITY
CONTRACTORS

- Sec.
43-14-15. Certain military certifications entitle persons to obtain certain professional licenses.
- Sec.
43-14-16. Limited reciprocal licensing of military spouses.

43-14-2. Definitions.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

License not required. — Trial court properly denied the contractor’s motion for partial summary judgment on the developers’ counterclaim that the parties’ contracts were unenforceable because the contractor was not required to have a utility contractor license under O.C.G.A. § 43-14-8.2 to perform work under the statute’s agreements with developers, and those agreements were not unenforceable on the ground that the contractor did not possess such a license; the contractor was not engaged in utility contracting in connection with the developers’ properties because none of the trenching, cutting, and installation related to the construction and access of the systems on the developers’ properties was done at a depth of five feet or deeper below the surface. Brantley Land & Timber, LLC v. W & D

Invs., Inc., 316 Ga. App. 277, 729 S.E.2d 458 (2012).

“Utility systems.” — O.C.G.A. § 43-14-2 is interpreted under the statute’s plain terms as defining utility systems to include only water supply systems at least five feet underground that are installed or accessed from the ground surface; thus, any water supply systems less

than five feet underground would not be considered utility systems under the statute and would not require a utility contractor license to construct, erect, alter, or repair or have constructed, erected, altered, or repaired. *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

43-14-8.2. Utility contractor license; utility manager; business entities; severance of connection with utility manager; unlawful contracts.

JUDICIAL DECISIONS

Interpretation. — Language of O.C.G.A. § 43-14-8.2 is perfectly plain, and the statute’s meaning is neither absurd, impossible of enforcement, or unreasonable. *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

License not required. — Trial court properly denied contractor’s motion for partial summary judgment on developers’ counterclaim that the parties’ contracts were unenforceable because the contractor was not required to have a utility contractor license under O.C.G.A.

§ 43-14-8.2 to perform work under its agreements with developers, and those agreements were not unenforceable on the ground that the contractor did not possess such a license; the contractor was not engaged in utility contracting in connection with the developers’ properties because none of the trenching, cutting, and installation related to the construction and access of the systems on the developers’ properties was done at a depth of five feet or deeper below the surface. *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

43-14-8.3. Utility manager certificate.

JUDICIAL DECISIONS

Cited in *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

43-14-15. Certain military certifications entitle persons to obtain certain professional licenses.

(a) As used in this Code section, the term:

(1) “Discharge” means an honorable discharge or a general discharge from active military service. Such term shall not mean a discharge under other than honorable conditions, a bad conduct discharge, or a dishonorable discharge.

(2) “Military” means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.

(b) A committee composed of the division director, members of the Governor’s Office of Workforce Development, and members of the relevant divisions of the licensing board representing the profession for which the applicant is seeking a license shall determine the military specialties or certifications the training or experience for which substantially meet or exceed the requirements to obtain a license for Electrical Contractor Class I, Journeyman Plumber, Conditioned Air Contractor Class I, or Utility Foreman. The Governor shall designate a chairperson from among the members of the committee.

(c) Any current or former member of the military may apply to the licensing board for the immediate issuance of a license or certification based upon his or her having obtained a military specialty or certification the training or experience for which substantially meet or exceed the requirements to obtain a license or certification identified in subsection (b) of this Code section. In order to qualify under this subsection, an applicant shall make application not later than 180 days after his or her discharge. Such application shall be in such form and shall require such documentation as the division director shall determine. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the appropriate license, and the division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees. (Code 1981, § 43-14-15, enacted by Ga. L. 2013, p. 26, § 1/HB 188.)

<p>Effective date. — This Code section became effective July 1, 2013.</p> <p>Editor’s notes. — Former Code Sec-</p>	<p>tion 43-14-15 was redesignated as Code Section 43-14-13, by Ga. L. 1993, p. 1339, § 11, effective April 15, 1993.</p>
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43-14-16. Limited reciprocal licensing of military spouses.

(a) As used in this Code section, the term “military” means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.

(b) The spouse of any member of the military who resides in this state due to the assignment of the military spouse and who holds a license or certification from another state the training, experience, and testing for which substantially meet or exceed the Georgia requirements to obtain a license or certification as an Electrical Contractor Class I, Journeyman Plumber, Conditioned Air Contractor Class I, or Utility Foreman shall be entitled to apply to the licensing board for the immediate issuance of such a license or certification. In order to qualify

under this subsection, an applicant shall make application not later than 180 days after his or her relocation to the State of Georgia. Such application shall be in such form and shall require such documentation as the division director shall determine. A committee composed of the division director, members of the Governor’s Office of Workforce Development, and members of the relevant divisions of the licensing board representing the profession for which the applicant is seeking a license, with a chairperson appointed by the Governor from among the membership of the committee, shall determine whether the training, experience, and testing for obtaining a license in the relevant foreign state substantially meet or exceed the requirements to obtain the professional licenses provided in this state. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the appropriate license, and the division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees. (Code 1981, § 43-14-16, enacted by Ga. L. 2013, p. 26, § 1/HB 188.)

Effective date. — This Code section became effective July 1, 2013.

Editor’s notes. — This Code section formerly pertained to exceptions to operation of this chapter. The former Code section was based on Ga. L. 1968, p. 308, § 20; Ga. L. 1980, p. 1299, § 13; Ga. L. 1981, p. 844, § 1; Ga. L. 1981, p. 1703,

§ 6; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 9; Ga. L. 1989, p. 1600, § 1; Ga. L. 1989, p. 1756, § 9; Ga. L. 1990, p. 8, § 43; Ga. L. 1991, p. 1581, § 3, and was repealed by Ga. L. 1993, p. 1339, § 12, effective April 15, 1993.

CHAPTER 18

FUNERAL DIRECTORS AND ESTABLISHMENTS,
EMBALMERS, AND CREMATORIES

Article 1

Funeral Directors and
Establishments,
Embalmers, and Crematories

PART 1

GENERAL PROVISIONS

Sec.
43-18-1. Definitions.

Sec.
43-18-9. Disposition of veterans’ cremated remains.

PART 3

LICENSES FOR FUNERAL DIRECTORS AND
EMBALMERS

43-18-50. Application for funeral service apprenticeship; period of apprenticeship.

ARTICLE 1

FUNERAL DIRECTORS AND ESTABLISHMENTS, EMBALMERS,
AND CREMATORIES

PART 1

GENERAL PROVISIONS

43-18-1. Definitions.

As used in this article, the term:

(1) “Alternative container” means any receptacle or enclosure which is of sufficient strength to be used to hold and to transport a dead human body.

(2) “Apprentice” means a person who practices embalming, funeral directing, or both, under the direct supervision of a funeral director, embalmer, or both, in this state.

(3) “Board” means the State Board of Funeral Service.

(4) “Casket” means a container which is designed for the encasement and viewing of a dead human body.

(5) “Cremation” means the reduction of the dead human body to residue by intense heat or any mechanical, chemical, thermal, or other professionally accepted process. Cremation also includes any other mechanical, chemical, thermal, or other professionally accepted process whereby human remains are pulverized, burned, re cremated, or otherwise further reduced in size or quantity.

(6) “Crematory” means any place where cremation is performed, other than a hospital, clinic, laboratory, or other facility authorized by the Department of Community Health for such purposes.

(7) “Direct supervision” means that the embalmer, funeral director, or both, are present overseeing the activities of the apprentice.

(8) “Embalmer” means a person who practices embalming or uses in connection with that person’s name the words “embalmer,” “licensed embalmer,” “undertaker,” or “mortician” or offers or holds himself or herself out as offering such services.

(9) “Final disposition” means the final disposal of a dead human body whether it is by, but not limited to, earth interment, above-ground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal.

(10) "Funeral" or "funeral services" means the observances, services, or ceremonies held for dead human bodies and includes any service relating to the transportation, embalming, cremation, and interment of a dead human body.

(11) "Funeral director" means a person who practices funeral directing or uses in connection with that person's name or with a picture of that person the words "funeral director," "licensed funeral director," "undertaker," or "mortician" or offers or holds himself or herself out as offering such services.

(12) "Funeral director in full and continuous charge" means a funeral director who is approved by the board to assume full responsibility for the operations of a particular funeral establishment and who shall ensure that said establishment complies with this article and with all rules promulgated pursuant thereto.

(13) "Funeral establishment" means a place where embalming or funeral directing is practiced and which is open to the public and transacting business relating to funeral services.

(14) "Funeral merchandise" means the goods that may only be sold or offered for sale by a funeral director working in a funeral establishment and includes, but is not limited to, a casket or alternative container, but does not include an outer burial container or cemetery marker.

(15) "Funeral service contract" means a written or oral agreement between a funeral director or funeral establishment and a legally authorized person for the embalming, funeral, or final disposition of a dead human body.

(16) "Legally authorized person" means the deceased's surviving spouse, a son or daughter who is 18 years of age or older; the deceased's parent, a brother or sister who is 18 years of age or older; any other person who is 18 years of age or older and who is in the next degree of kinship to the deceased; the deceased's guardian or personal representative; or a public health officer.

(17) "Outer burial container" means an enclosure into which a casket is placed, including, but not limited to, a vault made of concrete, steel, fiberglass, or copper, a sectional concrete enclosure, a crypt, or a wooden enclosure.

(18) "Practice of embalming" means disinfecting or preserving or attempting to disinfect or preserve dead human bodies by replacing certain body fluids with preserving and disinfecting chemicals.

(19) "Practice of funeral directing" means making or directing, at need or preneed, arrangements for the preparation and transporta-

tion of dead human bodies for final disposition and the supervision and direction of all funeral services.

(20) “Retort” means a furnace where dead human bodies are cremated.

(21) “Soliciting” means the making of any uninvited contact with another person by a funeral director or by a funeral director’s agent, assistant, employer, or employee for the purpose of the sale of funeral services or merchandise but shall not mean any advertising which is directed to the public in general. (Code 1981, § 43-18-1, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 1; Ga. L. 2002, p. 641, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2012, p. 625, § 3/HB 933.)

The 2012 amendment, effective July 1, 2012, in paragraph (5), added “or any mechanical, chemical, thermal, or other professionally accepted process” at the end of the first sentence, and added the

last sentence; and, at the end of paragraph (10), added “and includes any service relating to the transportation, embalming, cremation, and interment of a dead human body”.

43-18-8. Identification of body or remains of deceased; affidavit required for cremated remains.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011).

43-18-9. Disposition of veterans’ cremated remains.

(a) As used in this Code section, the term:

(1) “Veteran” means a resident of this state who qualifies as a veteran under the rules of the United States Department of Veterans Affairs and who was discharged under conditions other than dishonorable.

(2) “Veterans’ organization” means the Department of Veterans Service, the National Cemetery Administration’s National Cemetery Scheduling Office, or any association or other entity organized for the benefit of veterans that has been recognized or chartered by the United States Congress, such as the American Legion, the Legion of Honor, the Patriot Guard, the Missing in America Project, and the Vietnam Veterans of America.

(b) The funeral director shall make a reasonable effort to determine whether any dead body submitted for final disposition by cremation is that of a deceased veteran.

(c) The funeral director shall, at the time the cremation authorization form is signed:

(1) Inquire as to whether the legally authorized person has information or belief as to whether the deceased is a veteran; and

(2) Notify the legally authorized person of the responsibilities of the funeral director under this Code section.

(d) If the funeral director is unable to determine with certainty whether the deceased was a veteran through an inquiry with the legally authorized agent, then any veterans' organization shall be allowed access to all information available from the United States Department of Veterans Affairs regarding the deceased in the possession of the funeral director in charge of the crematory so that any veterans' organization may attempt to determine whether the deceased is a veteran. If any veterans' organization that is allowed access to information pursuant to this Code section discovers that the deceased is a veteran, the veterans' organization shall notify the funeral director.

(e)(1) If the funeral director determines that the deceased is a veteran from information provided by the legally authorized person, any veterans' organization, or otherwise, then such funeral director shall immediately notify the legally authorized person of such finding and shall advise that the deceased person may be eligible to be interred at an appropriate veterans' cemetery.

(2) If the funeral director determines that the deceased is a veteran from information provided by the legally authorized person, any veterans' organization, or otherwise, and the cremated remains are not claimed by a legally authorized person, then the funeral director shall hold any such cremated remains for at least 60 days. After 60 days, the funeral director shall send written notice to the legally authorized person who signed the cremation authorization form requesting disposition instructions. If the funeral director does not receive a written response from the legally authorized person within 30 days of sending a written notice, then the funeral director shall contact a veterans' organization so that arrangements for the disposition of the cremated remains of the veteran may be made in a state or national veterans' cemetery.

(f) Nothing in this Code section shall delay the authorized cremation of a deceased's remains.

(g)(1) A funeral director complying with this Code section shall be immune from any criminal or civil liability regarding:

(A) The determination of a deceased's status as a veteran;

(B) The release of information relating to the determination of a deceased's status as a veteran;

(C) The availability of interment or inurnment for a deceased veteran; or

(D) The release of cremated remains to a veterans' cemetery.

(2) A funeral director shall be immune from civil liability for any act or omission under this Code section except for willful or wanton misconduct.

(h) A veterans' organization shall be immune from civil liability for any act or omission related to the disposition of cremated remains under this Code section except for willful or wanton misconduct. (Code 1981, § 43-18-9, enacted by Ga. L. 2012, p. 881, § 2/SB 372.)

Effective date. — This Code section became effective May 1, 2012.

Editor's notes. — Ga. L. 2012, p. 881, § 1/SB 372, not codified by the General

Assembly, provides: "This Act shall be known as and may be cited as the 'Disposition of Veterans' Cremated Remains Act.'"

PART 3

LICENSES FOR FUNERAL DIRECTORS AND EMBALMERS

43-18-46. Grounds for denial or revocation of license or registration; other discipline.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-18-50. Application for funeral service apprenticeship; period of apprenticeship.

(a) Every person desiring to serve as an apprentice shall make application as a funeral service apprentice to the board upon a form provided by the board. The applicant must be at least 18 years of age and have either graduated from high school or have a general educational development certificate. The apprenticeship shall be served at an approved establishment and under the direct supervision of a funeral director, embalmer, or both. The application must be verified by oath of applicant and be accompanied by a fee to be established by the board. The application shall be submitted to the board and may be accepted or rejected by a majority of the board.

(b) An apprenticeship shall be approved for a specific establishment and under a specific supervising funeral director, embalmer, or both. Any change in establishment or supervising funeral director, embalmer, or both shall terminate that apprenticeship and shall require submission of a new application.

(c) The total period of apprenticeship shall be 3,120 hours and must be served in a minimum of 18 months, but the minimum period shall be in addition to the time required to graduate from a college of funeral

service or other college pursuant to paragraph (1) of subsection (b) of Code Section 43-18-41. An apprentice shall be authorized to earn apprenticeship hours in an amount to be determined by the board while attending a postgraduate school or a program at an accredited college of funeral service or other college approved by the board. (Code 1981, § 43-18-50, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 1998, p. 1322, § 2; Ga. L. 2012, p. 625, § 5/HB 933.)

The 2012 amendment, effective July 1, 2012, added the second sentence in subsection (c).

CHAPTER 19
GEOLOGISTS

Sec.
43-19-8. Official records and affidavits
as evidence [Repealed].

43-19-8. Official records and affidavits as evidence.

Reserved. Repealed by Ga. L. 2011, p. 99, § 68/HB 24, effective January 1, 2013.

Editor’s notes. — This Code section was based on Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2118A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 4; Ga. L. 2000, p. 1706, § 19.

CHAPTER 21
OPERATORS OF HOTELS, INNS, AND ROADHOUSES
ARTICLE 1
RIGHTS, DUTIES, AND LIABILITIES OF INNKEEPERS

43-21-1. Definitions.

JUDICIAL DECISIONS

No duty to monitor medical conditions of guests. — O.C.G.A. § 43-21-1 et seq., does not impose upon innkeepers the duty to rescue and does not expand an innkeeper’s duty of care for the personal safety of the innkeeper’s guests beyond that required in the state’s caselaw; to require that an innkeeper monitor in any

manner the possible health problems of a guest, which are not caused by or are unrelated to the stay at the facility, is not only unwarranted as a matter of law but unworkable as a matter of fact and practicality. *Rasnick v. Krishna Hospitality, Inc.*, 289 Ga. 565, 713 S.E.2d 835 (2011).

No duty to comply with requests to attempt rescue of guest from medical peril. — Court of appeals did not err in affirming an order granting a motel summary judgment in a wife’s a wrongful death action, alleging that the failure of the motel’s personnel to heed her concern about the guest amounted to a breach of

duty to render aid to a guest because the motel had no duty to comply with the wife’s requests to attempt a rescue of the guest from his medical peril; the alleged negligence in the wife’s suit could not be credibly cast as a condition of the premises or akin to a premises hazard like a smoke-filled building because any risk or problem stemming from a medical condition unrelated to and not caused by the guest’s stay at the facility was not internal to the premises but rather internal to the guest. *Rasnick v. Krishna Hospitality, Inc.*, 289 Ga. 565, 713 S.E.2d 835 (2011).

43-21-3.1. Notice of termination of occupancy by innkeeper.

JUDICIAL DECISIONS

Proper termination of hotel room rental agreement.

As a hotel manager had grounds to conclude that a guest was causing a disturbance, the manager was authorized to evict the guest for cause without giving advance notice under O.C.G.A.

§ 43-21-3.1(a). Therefore, the guest’s arrest for criminal trespass was legal and the guest’s false imprisonment claim against the hotel and manager was properly dismissed on summary judgment. *Lewis v. Ritz Carlton Hotel Co., LLC*, 310 Ga. App. 58, 712 S.E.2d 91 (2011).

CHAPTER 23

LANDSCAPE ARCHITECTS

43-23-3. Seal.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

CHAPTER 24A

MASSAGE THERAPY PRACTICE

Sec.
43-24A-8. Licensure of massage therapists; application and requirements.

Sec.
43-24A-9. Provisional permits.
43-24A-13. License by endorsement.

43-24A-8. Licensure of massage therapists; application and requirements.

(a) No person may practice massage therapy in this state who is not a licensed massage therapist or the holder of a valid provisional permit issued by the division director pursuant to this chapter.

(b) Any applicant for a license as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

(1) The applicant is at least 18 years of age;

(2) The applicant has a high school diploma or its recognized equivalent;

(3) The applicant is a citizen of the United States or a permanent resident of the United States;

(4) The applicant is of good moral character. For purposes of this paragraph, "good moral character" means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;

(5) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check;

(6) The applicant has completed successfully a board recognized educational program consisting of a minimum of 500 hours of course and clinical work; and

(7) The applicant has passed satisfactorily the National Certification Examination for Therapeutic Massage and Bodywork, an equivalent test approved by the board, or an examination administered by another state or jurisdiction whose license requirements meet or exceed those of this state. (Code 1981, § 43-24A-8, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2012, p. 1032, § 1/SB 143.)

The 2012 amendment, effective May 2, 2012, deleted former subsection (b); redesignated former subsection (c) as present subsection (b); in present subsection (b), substituted “Any” for “On and after July 1, 2007, any”; and substituted the present provisions of paragraph (b)(5)

for the former provisions, which read: “The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check;”.

43-24A-9. Provisional permits.

(a) A provisional permit to practice as a provisionally permitted massage therapist shall, upon proper application, be issued for a six-month period to an applicant who meets the following criteria:

(1) Holds a valid license as a massage therapist in another state;

(2) Is not a resident of this state as confirmed in a secure and verifiable document, as defined in Code Section 50-36-2;

(3) Has not had a license or permit to practice as a massage therapist voided, revoked, suspended, or annulled by this state or another state; and

(4) Has not been convicted of a felony in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to such charge or the affording of first offender treatment to any such charge.

(b) A provisional permit shall require the applicant to work under the supervision of a licensed massage therapist. If an applicant has met the requirements of subsection (a) of this Code section and submits the applicable license fee, the applicant shall be granted a provisional permit to practice in this state. Upon receipt of such application and fee, a provisional permit shall be administratively issued.

(c) A provisional permit may be voided if the board determines that the person holding such permit no longer meets one or more of the criteria set forth in subsection (a) of this Code section.

(d) A provisional permit issued pursuant to subsection (a) of this Code section shall have the same force and effect as a permanent license until the time of its expiration.

(e) A provisional permit issued pursuant to subsection (a) of this Code section shall expire on the same date as a license issued under this chapter to a holder of a provisional permit who has passed the examination pursuant to Code Section 43-24A-8. (Code 1981, § 43-24A-9, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2012, p. 1032, § 2/SB 143; Ga. L. 2013, p. 830, § 4A/HB 315.)

The 2012 amendment, effective May 2, 2012, rewrote this Code section.

The 2013 amendment, effective July 1, 2013, added “as confirmed in a secure and verifiable document, as defined in Code Section 50-36-2” at the end of paragraph (a)(2); and substituted the present provisions of subsection (b) for the former

provisions, which read: “A provisional permit shall require the applicant to work under the supervision of a licensed massage therapist as provided by the board. The board shall be authorized to promulgate rules and regulations regarding the requirements for such supervision and the enforcement thereof.”

43-24A-13. License by endorsement.

Any applicant for a license by endorsement as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

(1) The applicant is at least 18 years of age;

(2) The applicant is of good moral character. For purposes of this paragraph, “good moral character” means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant’s fitness to practice massage therapy;

(3) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by endorsement agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(4) The applicant is currently licensed as a massage therapist in another jurisdiction, state, or territory of the United States or foreign country which requires standards for licensure considered by the board to be equivalent to the requirements for licensure under this chapter. (Code 1981, § 43-24A-13, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2008, p. 1112, § 17/HB 1055; Ga. L. 2012, p. 1032, § 3/SB 143.)

The 2012 amendment, effective May 2, 2012, substituted the present provisions of paragraph (3) for the former provisions, which read: “The applicant agrees to provide the board with any and all

information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and”.

CHAPTER 25A

MUSIC THERAPY

Sec.	Sec.
43-25A-1. Definitions.	43-25A-6. Biennial renewal of license; address changes; failure to renew; inactive status of license.
43-25A-2. Creation of Music Therapy Advisory Group; membership; terms; service.	43-25A-7. Limited waiver of examination.
43-25A-3. Meetings; public education; consultation.	43-25A-8. Authority of Secretary of State to investigate and act upon conduct.
43-25A-4. Use of title “music therapist.”	
43-25A-5. Application for music therapy license.	

Effective date. — This chapter became effective July 1, 2012.

43-25A-1. Definitions.

As used in this chapter, the term:

- (1) “Advisory group” means the Music Therapy Advisory Group.
- (2) “Board certified music therapist” means an individual who has completed the education and clinical training requirements established by the American Music Therapy Association, has passed the Certification Board for Music Therapists certification examination or transitioned into board certification, and remains actively certified by the Certification Board for Music Therapists.
- (3) “Music therapist” means a person licensed to practice music therapy pursuant to this chapter.
- (4) “Music therapy” means the clinical and evidence based use of music interventions to accomplish individualized goals within a therapeutic relationship through an individualized music therapy treatment plan for the client that identifies the goals, objectives, and potential strategies of the music therapy services appropriate for the client using music therapy interventions, which may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, learning through music, and movement to music. This term may include:
 - (A) Accepting referrals for music therapy services from physicians, psychologists, speech-language pathologists, occupational therapists, physical therapists, audiologists, or other medical, developmental, or mental health professionals; education professionals; family members; clients; or caregivers. Before providing

music therapy services to a client for a medical, developmental, or mental health condition, the licensee shall collaborate, as applicable, with the client's physician, psychologist, or mental health professional to review the client's diagnosis, treatment needs, and treatment plan. During the provision of music therapy services to a client for a medical, developmental, or mental health condition, the licensee shall collaborate, as applicable, with the client's speech-language pathologist, occupational therapist, physical therapist, audiologist, or other medical or developmental professional to review the client's diagnosis, treatment needs, and treatment plan;

(B) Conducting a music therapy assessment of a client to collect systematic, comprehensive, and accurate information necessary to determine the appropriate type of music therapy services to provide for the client;

(C) Developing an individualized music therapy treatment plan for the client;

(D) Carrying out an individualized music therapy treatment plan that is consistent with any other medical, developmental, mental health, or educational services being provided to the client;

(E) Evaluating the client's response to music therapy and the individualized music therapy treatment plan and suggesting modifications, as appropriate;

(F) Developing a plan for determining when the provision of music therapy services is no longer needed in collaboration with the client, any physician, or other provider of health care or education of the client, any appropriate member of the family of the client, and any other appropriate person upon whom the client relies for support;

(G) Minimizing any barriers so that the client may receive music therapy services in the least restrictive environment; and

(H) Collaborating with and educating the client and the family or caregiver of the client or any other appropriate person about the needs of the client that are being addressed in music therapy and the manner in which the music therapy addresses those needs.

(5) "Office" means the office of the Secretary of State.

(6) "Secretary" means the Secretary of State or his or her designee. (Code 1981, § 43-25A-1, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-2. Creation of Music Therapy Advisory Group; membership; terms; service.

(a) There is created within the office of the Secretary of State a Music Therapy Advisory Group which shall consist of five members.

(b) The Secretary shall appoint all members of the advisory group. The advisory group shall consist of persons familiar with the practice of music therapy to provide the Secretary with expertise and assistance in carrying out his or her duties pursuant to this chapter.

(c) The Secretary shall appoint members of the advisory group to serve for terms of four years. The Secretary shall appoint three members who practice as music therapists in this state; one member who is a licensed health care provider who is not a music therapist; and one member who is a consumer.

(d) Members shall serve without compensation.

(e) Members may serve consecutive terms at the will of the Secretary. Any vacancy shall be filled in the same manner as the regular appointments. (Code 1981, § 43-25A-2, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-3. Meetings; public education; consultation.

(a) The advisory group shall meet at least once per year or as otherwise called by the Secretary.

(b) The Secretary shall consult with the advisory group prior to setting or changing fees in this chapter.

(c) The advisory group may facilitate the development of materials that the Secretary may utilize to educate the public concerning music therapist licensure, the benefits of music therapy, and utilization of music therapy by individuals and in facilities or institutional settings.

(d) The advisory group may act as a facilitator of state-wide dissemination of information between music therapists, the American Music Therapy Association or any successor organization, the Certification Board for Music Therapists or any successor organization, and the Secretary.

(e) The advisory group shall provide analysis of disciplinary actions taken, appeals and denials, or revocation of licenses at least once per year.

(f) The Secretary shall seek the advice of the advisory group for issues related to music therapy. (Code 1981, § 43-25A-3, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-4. Use of title “music therapist.”

After January 1, 2014, no person without a license as a music therapist shall use the title “music therapist” or similar title, or perform the duties of a music therapist, provided that this chapter shall not

prohibit any practice of music therapy that is an integral part of a program of study for students enrolled in an accredited music therapy program. Nothing in this Code section shall be construed as preventing or restricting the practice, services, or activities of any profession including occupational therapists, speech-language pathologists, physical therapists, or audiologists that may also use music in the scope of their practice. (Code 1981, § 43-25A-4, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-5. Application for music therapy license.

The Secretary shall issue a license to an applicant for a music therapy license when such applicant has completed and submitted an application upon a form and in such manner as the Secretary prescribes, accompanied by applicable fees, and evidence satisfactory to the Secretary that:

(1) The applicant is at least 18 years of age;

(2) The applicant holds a bachelor's degree or higher in music therapy, or its equivalent, from a program approved by the American Music Therapy Association or any successor organization within an accredited college or university;

(3) The applicant successfully completes a minimum of 1,200 hours of clinical training, with at least 180 hours in preinternship experiences and at least 900 hours in internship experiences, provided that the internship shall be approved by an academic institution, the American Music Therapy Association or any successor organization, or both;

(4) The applicant is in good standing based on a review of the applicant's music therapy licensure history in other jurisdictions, including a review of any alleged misconduct or neglect in the practice of music therapy on the part of the applicant;

(5) The applicant provides proof of passing the examination for board certification offered by the Certification Board for Music Therapists or any successor organization or provides proof of being transitioned into board certification, and provides proof that the applicant is currently a board certified music therapist; and

(6) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the Secretary. Application for a license under this Code section shall constitute express consent and authorization for the Secretary or his or her representative to perform a criminal background check. Each applicant who submits an application to the Secretary for licensure by

examination agrees to provide the Secretary with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check. (Code 1981, § 43-25A-5, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-6. Biennial renewal of license; address changes; failure to renew; inactive status of license.

(a) Every license issued under this chapter shall be renewed biennially. A license shall be renewed upon payment of a renewal fee if the applicant is not in violation of any of the terms of this chapter at the time of application for renewal. The following shall also be required for license renewal:

(1) Proof of maintenance of the applicant's Certification Board for Music Therapists credentials; and

(2) Proof of completion of a minimum of 40 hours of continuing education in a program approved by the Certification Board of Music Therapists or any successor organization and any other continuing education requirements established by the Secretary.

(b) A licensee shall inform the Secretary of any changes to his or her address. Each licensee shall be responsible for timely renewal of his or her license.

(c) Failure to renew a license shall result in forfeiture of the license. Licenses that have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license, and the Secretary may require the individual to reapply for licensure as a new applicant.

(d) Upon written request of a licensee, the Secretary may place an active license on an inactive status subject to an inactive status fee established by the Secretary. The licensee, upon request and payment of the inactive license fee, may continue on inactive status for a period up to two years. An inactive license may be reactivated at any time by making a written request to the Secretary and by fulfilling requirements established by the Secretary. (Code 1981, § 43-25A-6, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-7. Limited waiver of examination.

The Secretary shall waive the examination requirement for an applicant until January 1, 2014, who is:

(1) Certified as a music therapist and in good standing with the Certification Board for Music Therapists; or

(2) Designated as a registered music therapist, certified music therapist, or advanced certified music therapist and in good standing with the National Music Therapy Registry. (Code 1981, § 43-25A-7, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-8. Authority of Secretary of State to investigate and act upon conduct.

(a) The Secretary may revoke, suspend, deny, or refuse to issue or renew a license; place a licensee on probation; or issue a letter of admonition upon proof that the licensee:

(1) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(2) Has been convicted of a felony as provided under state law;

(3) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under the individual's care;

(4) Has had a license to practice music therapy suspended or revoked or has otherwise been subject to discipline related to the individual's practice of music therapy in any other jurisdiction;

(5) Has committed a fraudulent insurance act;

(6) Excessively or habitually uses alcohol or drugs, provided that the Secretary shall not discipline an individual under this paragraph if the individual is enrolled in a substance abuse program approved by the office; or

(7) Has a physical or mental disability that renders the individual incapable of safely administering music therapy services.

(b) The Secretary is authorized to conduct investigations into allegations of conduct described in subsection (a) of this Code section.

(c) In addition to suspension, revocation, denial, or refusal to renew a license, the Secretary shall fine a person found to have violated any provision of this chapter or any rule adopted by the Secretary under this chapter not less than \$100.00 nor more than \$1,000.00 for each violation.

(d) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be applicable to the Secretary of State and the provisions of this chapter. (Code 1981, § 43-25A-8, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

CHAPTER 26

NURSES

Article 1

Georgia Registered Professional Nurse Practice Act

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Licensed Practical Nurses

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Article 3

Mandatory Reporting Requirements for Nurses

- 43-26-50. (For effective date, see note.) Definitions.
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43-26-53. (For effective date, see note.) Reportable incidents.
43-26-54. (For effective date, see note.) Court order; citation for civil contempt.
43-26-55. (For effective date, see note.) Immunity from liability for good-faith reporting.

ARTICLE 1

GEORGIA REGISTERED PROFESSIONAL NURSE PRACTICE ACT

43-26-3. Definitions.

As used in this article, the term:

(1) “Advanced nursing practice” means practice by a registered professional nurse who meets those educational, practice, certification requirements, or any combination of such requirements, as

specified by the board and includes certified nurse midwives, nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists in psychiatric/mental health, and others recognized by the board.

(1.1) “Advanced practice registered nurse” means a registered professional nurse licensed under this chapter who is recognized by the board as having met the requirements established by the board to engage in advanced nursing practice and who holds a master’s degree or other graduate degree from an approved nursing education program and national board certification in his or her area of specialty, or a person who was recognized as an advanced practice registered nurse by the board on or before June 30, 2006. This paragraph shall not be construed to require a certified registered nurse anesthetist who graduated from an approved nurse anesthetist educational program prior to January 1, 1999, to hold a master’s degree or other graduate degree.

(1.2) “Approved nursing education program” located in this state means a nursing education program approved by the board as meeting criteria established by the board. An “approved nursing education program” located outside this state means a nursing education program that the board has determined to meet criteria similar to and not less stringent than criteria established by the board for nursing education programs located in this state. In order to be approved by the board, a nursing education program must be one that is offered by:

(A) A unit of the University System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(B) An institution of the Technical College System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(C) A postsecondary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(D) A postsecondary institution of higher education that is not accredited in accordance with subparagraph (C) of this paragraph, but whose curriculum has been determined by the board to meet criteria similar to and not less stringent than criteria established by the board for other approved nursing education programs.

(2) “Board” means the Georgia Board of Nursing created in Code Section 43-26-4.

(3) “Consumer member” means a United States citizen and Georgia resident who is knowledgeable about consumer health concerns,

does not derive that person's primary livelihood from the practice of nursing, and shall neither be, nor ever have been, a health care provider or enrolled in any health related educational program.

(4) "License" means a current document, issued by the board, permitting a person to practice nursing as a registered professional nurse or a licensed undergraduate nurse.

(5) "Licensure" means the bestowing of a current license by the board permitting a person to practice nursing as a registered professional nurse or a licensed undergraduate nurse.

(6) "Practice nursing" or "practice of nursing" means to perform for compensation or the performance for compensation of any act in the care and counsel of the ill, injured, or infirm, and in the promotion and maintenance of health with individuals, groups, or both throughout the life span. It requires substantial specialized knowledge of the humanities, natural sciences, social sciences, and nursing theory as a basis for assessment, nursing diagnosis, planning, intervention, and evaluation. It includes, but is not limited to, provision of nursing care; administration, supervision, evaluation, or any combination thereof, of nursing practice; teaching; counseling; the administration of medications and treatments as prescribed by a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, or a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title.

(7) "Practice nursing as a licensed undergraduate nurse" means to practice nursing by performing for compensation selected acts in the care of the ill, injured, or infirm under the direction of a registered professional nurse, a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title.

(8) "Practice nursing as a registered professional nurse" means to practice nursing by performing for compensation any of the following:

(A) Assessing the health status of individuals, groups, or both throughout the life span;

(B) Establishing a nursing diagnosis;

(C) Establishing nursing goals to meet identified health care needs;

(D) Planning, implementing, and evaluating nursing care;

(E) Providing for safe and effective nursing care rendered directly or indirectly;

(F) Managing and supervising the practice of nursing;

(G) Collaborating with other members of the health care team in the management of care;

(H) Teaching the theory and practice of nursing;

(I) Administering, ordering, and dispensing medications, diagnostic studies, and medical treatments authorized by protocol, when such acts are authorized by other general laws and such acts are in conformity with those laws;

(J) Administering medications and treatments as prescribed by a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title; or

(K) Performing any other nursing act in the care and counsel of the ill, injured, or infirm, and in the promotion and maintenance of health with individuals, groups, or both throughout the life span.

(9) “Registered professional nurse” means a person who is authorized by a license issued under this article to practice nursing as a registered professional nurse. (Code 1981, § 43-26-3, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2006, p. 125, § 3/SB 480; Ga. L. 2007, p. 460, § 1/SB 222; Ga. L. 2009, p. 210, § 1/HB 475; Ga. L. 2011, p. 779, § 1/SB 100; Ga. L. 2012, p. 19, § 1/HB 675.)

The 2012 amendment, effective February 16, 2012, in paragraph (1.2), added “for nursing education programs located in this state” at the end of the second sentence of the introductory paragraph; in subparagraph (1.2)(C), deleted “nonprofit” preceding “postsecondary”, and added “or” at the end; deleted former subparagraph (1.2)(D), which read: “A proprietary institution of higher education that is accredited

by a regional accrediting agency recognized by the United States Department of Education; or”; redesignated former subparagraph (1.2)(E) as present subparagraph (1.2)(D); and, in subparagraph (1.2)(D), deleted “nonprofit” preceding “postsecondary”, and deleted “that is a four-year institution” following “higher education”.

43-26-4. (For effective date, see note.) Georgia Board of Nursing; membership; meetings; officers.

(a) The Georgia Board of Nursing existing immediately prior to July 1, 2014, is continued in existence and shall be constituted as provided in this Code section. Those persons serving as members of the board immediately prior to July 1, 2014, shall continue to serve out their respective terms of office and until their successors are appointed. Members shall serve three-year terms and until their successors are duly appointed and qualified. No member shall be appointed to more

than two consecutive full terms, and for purposes of this limitation, an appointment to fill a vacancy for an unexpired term of two or more years shall constitute an appointment for a full term.

(b) A vacancy on the board for any reason other than expiration of the term shall be filled for the remainder of the unexpired term by appointment of the Governor with the confirmation of the Senate. In the event a board member changes employment which causes a conflict with this Code section, the position of the member making such change shall be immediately vacant and a new member appointed to fill the vacancy.

(c) The 13 members of the board shall be appointed by the Governor with the confirmation of the Senate and shall consist of two registered nursing educators, one practical nursing educator, two registered nurses employed in nursing service administration, one registered nurse employed in nursing home administration or nursing service administration, two advanced practice registered nurses, one additional registered nurse, three licensed practical nurses, and one consumer member.

(d) The board shall meet annually and shall elect from its members a president, vice president, and other officers as deemed necessary. All officers shall serve for terms of one year and until their successors have been elected. The board may hold such other meetings during the year as necessary to transact its business. (Code 1981, § 43-26-4, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2013, p. 643, § 1/HB 332.)

Delayed effective date. — This Code section, as set out above, becomes effective July 1, 2014. For version of this Code section in effect until July 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective July 1, 2014, in subsection (a), in the first sentence, substituted “July 1, 2014” for “April 4, 1990”, substituted “be constituted as provided in this Code section” for “continue to consist of eight members to be appointed by the Governor with the confirmation of the Senate”, added the second sentence, and deleted the former next-to-last sentence, which read: “Those persons serving as members of the board immediately prior to April 4, 1990, shall continue to serve out their respective terms of office and until their respective successors are appointed and qualified.”; added the second sentence of subsection (b); substituted the present provisions of subsection (c) for the former provisions, which read: “Each of seven members ap-

pointed to the board shall be a registered professional nurse; shall have practiced nursing as a registered professional nurse for at least five years since graduation and immediately prior to appointment; shall be engaged in paid employment in clinical, educational, or administrative positions, or any combination thereof; shall be a citizen of the United States; and a resident of Georgia. The eighth member shall be a consumer member appointed by the Governor.”; deleted former subsection (d), which read: “No fewer than two members of the board shall hold master’s or doctoral degrees or both. No fewer than two members of the board shall be currently employed in nursing service administration. No fewer than two members of the board shall be currently employed in professional nursing education. No two members of the board shall be employed by the same private school, school within the University System of Georgia, private employer, agency of state government, or

another public employer. In the event a board member changes employment which causes a conflict with this subsection, the position of the member making such change shall be immediately vacant and a new member appointed to fill the vacancy.”; and redesignated former subsection (e) as present subsection (d).

Editor’s notes. — Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General

Assembly, provides that: “For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-5. (For effective date, see note.) General powers and responsibilities of board.

(a) The board shall:

(1) Be responsible for the enforcement of the provisions of this chapter and shall be specifically granted all of the necessary duties, powers, and authority to carry out this responsibility;

(2) Be authorized to draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this chapter in the protection of public health, safety, and welfare;

(3) Enforce qualifications for licensure under this article or Article 2 of this chapter;

(4) Develop and enforce reasonable and uniform standards for nursing education and nursing practice;

(5) Periodically evaluate nursing education programs and approve such programs as meet the board’s requirements;

(6) Deny or withdraw approval from noncompliant nursing education programs;

(7) License duly qualified applicants under this article or Article 2 of this chapter by examination, endorsement, or reinstatement;

(8) Be authorized to issue temporary permits;

(9) Renew licenses of registered professional nurses, licensed undergraduate nurses, and licensed practical nurses in accordance with this article or Article 2 of this chapter;

(10) Be authorized to set standards for competency of licensees under this article or Article 2 of this chapter continuing in or returning to practice;

(11) Set standards for and regulate advanced nursing practice;

(12) Be authorized to enact rules and regulations for registered professional nurses in their performing acts under a nurse protocol as authorized in Code Section 43-34-23 and enact rules and regulations

for advanced practice registered nurses in performing acts as authorized in Code Section 43-34-25;

(13) Implement the disciplinary process;

(14) Be authorized to issue orders when a license under this article or Article 2 of this chapter is surrendered to the board while a complaint, investigation, or disciplinary action against such license is pending;

(15) Issue a limited license to practice nursing or licensed practical nursing subject to such terms and conditions as the board may impose;

(16) Provide consultation and conduct conferences, forums, studies, and research on nursing education and nursing practice;

(17) Approve the selection of a qualified person to serve as executive director;

(18) Be authorized to appoint standing or ad hoc committees as necessary to inform and make recommendations to the board about issues and concerns and to facilitate communication amongst the board, licensees under this article or Article 2 of this chapter, and the community;

(19) Maintain membership in the national organization which develops and regulates the nursing licensing examination and the practical nursing licensing examination;

(20) Be authorized to collect data regarding existing nursing and licensed practical nursing resources in Georgia and coordinate planning for nursing education and nursing practice;

(21) Determine fees; and

(22) Adopt a seal which shall be in the care of the executive director and shall be affixed only in such a manner as prescribed by the board.

(b) The board shall be the sole professional licensing board for determining if a registered professional nurse, licensed practical nurse, or any other person has engaged illegally in the practice of nursing. If a registered professional nurse or licensed practical nurse is charged with the unauthorized practice of any other health profession by any other board, such board shall notify the Georgia Board of Nursing before conducting any hearing. Nothing contained in this chapter shall be construed to limit any powers of any other board.

(c) Chapter 1 of this title is expressly adopted and incorporated by reference into this chapter as if all the provisions of such chapter were included in this chapter. (Code 1981, § 43-26-5, enacted by Ga. L. 1990,

p. 747, § 1; Ga. L. 2000, p. 1706, § 13; Ga. L. 2006, p. 125, § 4/SB 480; Ga. L. 2009, p. 859, § 12/HB 509; Ga. L. 2013, p. 643, § 2/HB 332.)

Delayed effective date. — This Code section, as set out above, becomes effective July 1, 2014. For version of this Code section in effect until July 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective July 1, 2014, substituted “chapter” for “article” and inserted “under this article or Article 2 of this chapter” throughout this Code section; in paragraph (a)(9), substituted “nurses, licensed” for “nurses and licensed” near the beginning, inserted “, and licensed practical nurses” near the middle, and added “or Article 2 of this chapter” at the end; in paragraph (a)(15), inserted “or licensed practical nursing”; in paragraph (a)(19), added “and the practi-

cal nursing licensing examination”; in paragraph (a)(20), inserted “and licensed practical nursing”; and, in subsection (b), inserted “, licensed practical nurse,” in the first sentence, and inserted “or licensed practical nurse” in the second sentence.

Editor’s notes. — Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-9. Biennial renewal of licenses; continuing competency requirements; voluntary surrender or failure to renew license; restoration and reissuance of license.

(a) Licenses issued under this article shall be renewed biennially according to schedules and fees approved by the board.

(b) A renewed license shall be issued to a registered professional nurse or licensed undergraduate nurse who remits the required fee and complies with requirements established by the board.

(b.1) Beginning with the 2016 license renewal cycle, an applicant for license renewal under this article shall meet one of the following continuing competency requirements during the previous licensure period:

(1) Completion of 30 continuing education hours by a board approved provider;

(2) Maintenance of certification or recertification by a national certifying body recognized by the board;

(3) Completion of an accredited academic program of study in nursing or a related field, as recognized by the board;

(4) Verification of competency by a health care facility or entity licensed under Chapter 7 of Title 31 or by a physician’s office that is part of a health system and at least 500 hours practiced as evidenced by employer certification on a form approved by the board; or

(5) Other activities as prescribed and approved by the board that show competency in the nursing field.

Failure to meet the minimum continuing competency requirement for renewal of a license shall be grounds for denial of a renewal application. The board may waive or modify the requirements contained in this subsection in cases of hardship, disability, or illness or under such other circumstances as the board, in its discretion, deems appropriate. An applicant who is renewing a license for the first time shall not be required to meet the requirements of this subsection until the time of the second renewal if the applicant's initial license period is six months or less.

(c) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license and, as a condition thereof, may impose any disciplinary sanction provided by Code Section 43-1-19 or 43-26-11. (Code 1981, § 43-26-9, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2013, p. 830, § 1/HB 315.)

The 2013 amendment, effective July 1, 2013, added subsection (b.1); and substituted "Code Section 43-1-19 or 43-26-11" for "Code Section 43-26-11 or Code Section 43-1-19" at the end of the second sentence of subsection (c).

43-26-9.1. Inactive status; restoration of inactive license; nurses on inactive status barred from practicing.

(a) A registered professional nurse, subject to rules of the board and on forms prescribed by the board, may request that his or her license be placed on inactive status and to be excused from payment of renewal fees until he or she resumes active status.

(b) A licensee on inactive status may have his or her license restored by submitting an application to the board on a form prescribed by the board and paying the required restoration fee. The board shall require evidence of competency to resume the practice of nursing as a registered professional nurse in order to restore the license to active status.

(c) A registered professional nurse or advanced practice registered nurse whose license is on inactive status shall not practice nursing as a registered professional nurse or an advanced practice registered nurse in this state. (Code 1981, § 43-26-9.1, enacted by Ga. L. 2013, p. 830, § 2/HB 315.)

Effective date. — This Code section became effective July 1, 2013.

ARTICLE 2

LICENSED PRACTICAL NURSES

43-26-32. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) “Active practice as a licensed practical nurse” means to practice practical nursing as a licensed practical nurse by performing for compensation acts authorized by the board.

(1.1) “Approved nursing education program” located in this state means a nursing education program approved by the board as meeting criteria established by the board. An “approved nursing education program” located outside this state means a nursing education program that the board has determined to meet criteria similar to and not less stringent than criteria established by the board for nursing education programs located in this state. In order to be approved by the board, a nursing education program must be one that is offered by:

(A) A unit of the University System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(B) An institution of the Technical College System of Georgia;

(C) A postsecondary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(D) A postsecondary institution of higher education that is not accredited in accordance with subparagraph (C) of this paragraph, but whose curriculum has been determined by the board to meet criteria similar to and not less stringent than criteria established by the board for other approved nursing education programs.

(2) (For effective date, see note.) “Board” means the Georgia Board of Nursing created in Code Section 43-26-4.

(3) (For effective date, see note.) Reserved.

(4) “License” means a current document, issued by the board, permitting a person to practice practical nursing as a licensed practical nurse.

(5) “Licensed practical nurse” means a person who has completed a board approved nursing program necessary to qualify for examination for licensure and who is authorized by a license issued under this article to practice practical nursing.

(6) “Licensure” means the bestowing of a current license by the board permitting a person to practice practical nursing as a licensed practical nurse.

(7) “The practice of licensed practical nursing” means the provision of care for compensation, under the supervision of a physician practicing medicine, a dentist practicing dentistry, a podiatrist practicing podiatry, or a registered nurse practicing nursing in accordance with applicable provisions of law. Such care shall relate to the maintenance of health and prevention of illness through acts authorized by the board, which shall include, but not be limited to, the following:

(A) Participating in the assessment, planning, implementation, and evaluation of the delivery of health care services and other specialized tasks when appropriately trained and consistent with board rules and regulations;

(B) Providing direct personal patient observation, care, and assistance in hospitals, clinics, nursing homes, or emergency treatment facilities, or other health care facilities in areas of practice including, but not limited to: coronary care, intensive care, emergency treatment, surgical care and recovery, obstetrics, pediatrics, outpatient services, home health care, or other such areas of practice;

(C) Performing comfort and safety measures;

(D) Administering treatments and medication; and

(E) Participating in the management and supervision of unlicensed personnel in the delivery of patient care. (Code 1981, § 43-26-32, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 1; Ga. L. 2009, p. 210, § 4/HB 475; Ga. L. 2012, p. 19, § 2/HB 675; Ga. L. 2013, p. 643, § 3/HB 332.)

Delayed effective date. — Paragraphs (2) and (3), as set out above, become effective July 1, 2014. For version of paragraphs (2) and (3) in effect until July 1, 2014, see the 2013 amendment note.

The 2012 amendment, effective February 16, 2012, in paragraph (1.1), added “for nursing education programs located in this state” at the end of the second sentence of the introductory paragraph; deleted “nonprofit” preceding “postsecondary” in subparagraph (1.1)(C); and substituted the present provisions of subparagraph (1.1)(D) for the former provisions, which read: “A proprietary institution of higher education that is accredited by a

regional accrediting agency recognized by the United States Department of Education.”

The 2013 amendment, effective July 1, 2014, substituted the present provisions of paragraph (2) for the former provisions, which read: “‘Board’ means the Georgia Board of Examiners of Licensed Practical Nurses created in Code Section 43-26-34.”; and substituted “Reserved.” for the former provisions of paragraph (3), which read: “‘Consumer member’ means a United States citizen and Georgia resident who is knowledgeable about consumer health concerns, does not derive that person’s primary livelihood from the

practice of nursing, and shall neither be nor ever have been a health care provider or enrolled in any health related educational program.”

Editor’s notes. — Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the recon-

stituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-34. (Repealed effective July 1, 2014) Board of examiners created; appointment of members; terms; filling of vacancies; meetings; reimbursement of expenses.

Reserved. Repealed by Ga. L. 2013, p. 643, § 4/HB 332, effective July 1, 2014.

Editor’s notes. — Ga. L. 2013, p. 643, § 4/HB 332 provides for the repeal of this Code section, effective July 1, 2014. For version of this Code section effective until that date, see the bound volume. This Code section was based on Code 1981, § 43-26-34, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2008, p. 335, § 7/SB 435.

Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, pro-

vides that: “For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-35. (Repealed effective July 1, 2014) Duties of board generally.

Reserved. Repealed by Ga. L. 2013, p. 643, § 4/HB 332, effective July 1, 2014.

Editor’s notes. — Ga. L. 2013, p. 643, § 4/HB 332 provides for the repeal of this Code section, effective July 1, 2014. For version of this Code section effective until that date, see the bound volume. This Code section was based on Code 1981, § 43-26-35, enacted by Ga. L. 1992, p. 2151, § 1.

Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, pro-

vides that: “For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-36. (For effective date, see note.) Application for licensure; examination; temporary permits.

(a)(1) All applicants for a license to practice as a licensed practical nurse shall make application through the board. An applicant for licensure who has not been duly examined according to the prescribed examination approved by the board and who does not otherwise

qualify for licensure under this article must apply by examination. Such applicants shall submit to the board a designated fee and written evidence verifying that the applicant:

- (A) Is at least 18 years of age;
- (B) Has graduated from high school or the equivalent thereof;
- (C) Has graduated from an approved nursing education program, as defined in Code Section 43-26-32;
- (D) Is in good physical and mental health; and
- (E) In the case of an applicant who has graduated from a program conducted in a foreign country, has demonstrated the ability to speak, write, and understand the English language.

(2) A person who is at least 17 years of age and meets all of the criteria set forth in paragraph (1) of this subsection may apply to the board for special consideration to take the examination for licensure.

(b)(1) (For effective date, see note.) The board may issue a temporary permit to applicants for licensure by examination pursuant to paragraph (8) of subsection (a) of Code Section 43-26-5. A temporary permit issued to an applicant for licensure by examination shall be valid from the date of issuance until the first examination scheduled for the applicant is graded and a license is issued. If the applicant does not appear for the examination, the temporary permit shall automatically become invalid the day of the examination. If the applicant fails the examination, the permit shall automatically become invalid when the examination is graded and may not be reissued.

(2) An applicant who fails to appear at the first examination and can show proper cause for failure to appear may receive a second temporary permit upon reapplying to take the examination. Such second permit shall be governed by the same validity provisions as the first permit. Upon failure to appear at a second examination, the applicant shall not be eligible to receive another temporary permit. (Code 1981, § 43-26-36, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 2; Ga. L. 2009, p. 210, § 5/HB 475; Ga. L. 2013, p. 643, § 6/HB 332.)

Delayed effective date. — Paragraph (b)(1), as set out above, becomes effective July 1, 2014. For version of paragraph (b)(1) in effect until July 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective July 1, 2014, in paragraph (b)(1), substituted “paragraph (8) of subsection (a) of Code Section 43-26-5” for “paragraph (7) of

Code Section 43-26-35” in the first sentence, and substituted “permit shall automatically become invalid” for “permit is automatically invalid” in the third sentence.

Editor’s notes. — Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the recon-

stituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all

other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-39. Renewal of license; continuing competency requirements; voluntary surrender; application for reinstatement; temporary permit.

(a) Licenses issued under this article shall be renewed biennially prior to the expiration of the license according to schedules and fees decided by the board and approved by the division director.

(b) A license shall be renewed for any licensed practical nurse who remits the required fee and complies with the requirements established by the board.

(b.1) Beginning with the 2016 license renewal cycle, an applicant for license renewal under this article shall meet one of the following continuing competency requirements during the previous licensure period:

(1) Completion of 20 continuing education hours by a board approved provider; or

(2) Completion of an accredited academic program of study in registered professional nursing, as recognized by the board.

Failure to meet the minimum continuing competency requirement for renewal of a license shall be grounds for denial of a renewal application. The board may waive or modify the requirements contained in this subsection in cases of hardship, disability, or illness or under such other circumstances as the board, in its discretion, deems appropriate. An applicant who is renewing a license for the first time shall not be required to meet the requirements of this subsection until the time of the second renewal if the applicant’s initial license period is six months or less.

(c) The voluntary surrender of a license or the failure to renew a license by the end of an established renewal period shall have the same effect as revocation of said license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license and, as a condition thereof, may impose any disciplinary sanction provided by Code Section 43-1-19 upon such grounds as specified in Code Sections 43-1-19 and 43-26-40.

(d) Any license that is not renewed by the end of the renewal period may not thereafter be renewed, and the licensee must apply for reinstatement. Applicants for reinstatement who have not been engaged in the active practice of practical nursing as licensed practical

nurses for a period which exceeds five years shall be required to obtain such additional education and training as provided in the rules and regulations of the board, which may include, but not be limited to, returning to school for full training and taking the licensing examination. Upon completion of the program, an application may be made for licensure as a new applicant.

(e) The board may issue a temporary permit to qualified applicants under such terms and conditions as specified in the rules and regulations of the board, but in no event shall such a temporary permit be issued to an applicant who has failed to pass the required examination.

(f) Other criteria for reinstatement may be determined by the rules of the board, including, but not limited to, additional coursework, a refresher course, supervised clinical practice, or examination by the board. (Code 1981, § 43-26-39, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 830, § 3/HB 315.)

The 2013 amendment, effective July 1, 2013, added subsection (b.1); in subsection (d), added commas following “may

include” and “limited to” in the second sentence; and deleted “the following:” preceding “additional” in subsection (f).

ARTICLE 3

MANDATORY REPORTING REQUIREMENTS FOR NURSES

Delayed effective date. — Ga. L. 2013, p. 830, § 5/HB 315, not codified by the General Assembly, provides this article becomes effective only when funds are specifically appropriated for purposes of this Act in an Appropriations Act making specific reference to this Act. Funds were not appropriated at the 2013 session of the General Assembly.

Editor’s notes. — The former article

consisted of Code Sections 43-26-50 through 43-26-60, relating to qualified medication aides, and was based on Code 1981, §§ 43-6-50 — 43-26-60, enacted by Ga. L. 2006, p. 125, § 1/SB 480; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2009, p. 453, §§ 1-45, 1-46/HB 228, and was repealed by Ga. L. 2006, p. 125, § 1/SB 480, effective July 1, 2011.

43-26-50. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) “Board” means the Georgia Board of Nursing, with respect to registered professional nurses and advanced practice registered nurses, and the Georgia Board of Examiners of Licensed Practical Nurses, with respect to licensed practical nurses.

(2) “Nurse” means a registered professional nurse licensed pursuant to Article 1 of this chapter, an advanced practice registered nurse, as defined in paragraph (1.1) of Code Section 43-26-3, or a licensed practical nurse licensed pursuant to Article 2 of this chapter. (Code 1981, § 43-26-50, enacted by Ga. L. 2013, p. 830, § 4/HB 315.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-26-51. (For effective date, see note.) Mandatory reporting requirement for violations of grounds for discipline; no reporting requirement for knowledge obtained via privileged communications.

A nurse shall report names of subject individuals to the applicable board if the nurse has reasonable cause to believe that any other nurse has violated any of the grounds for discipline provided for in Code Section 43-26-53. A nurse need not duplicate a report if he or she has reasonable cause to believe that such report has been made to the applicable board. A licensed health care professional shall not be required to report a nurse to the board under this Code section as a result of professional knowledge obtained in the course of the health care professional-patient relationship when the nurse is the patient. (Code 1981, § 43-26-51, enacted by Ga. L. 2013, p. 830, § 4/HB 315.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-26-52. (For effective date, see note.) Institutional reporting requirements; voluntary submission to alternative to discipline program not subject to reporting requirement.

(a) Hospitals, nursing homes, temporary staffing agencies, and other employers of registered professional nurses, advanced practice registered nurses, or licensed practical nurses shall report to the applicable board, or ensure that such report has in fact been made to such board, the name of any nurse whose employment has been terminated or who has resigned in order to avoid termination for any reasons stipulated in Code Section 43-26-53.

(b) A state agency that licenses, registers, or certifies hospitals, nursing homes, home health agencies, or other types of health care facilities, or surveys one of these facilities or agencies, shall report to the applicable board when such state agency has evidence that a nurse has violated Code Section 43-26-53 or ensure that such a report has in fact been made to such board.

(c) In the event a nurse enters a voluntary alternative to discipline program approved by the board, reporting to the applicable board shall not be required for such nurse by a person under this Code section. Each board may approve alternative to discipline programs for monitoring of nurses who agree to seek treatment for impairment by chemical dependency or mental illness that could lead to disciplinary

action by such board. The costs for any treatment programs shall be borne by the nurse.

(d) Each board shall inform, in the manner such board determines appropriate, nurses, facilities, agencies, and other persons of their duty to report under this article. (Code 1981, § 43-26-52, enacted by Ga. L. 2013, p. 830, § 4/HB 315.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-26-53. (For effective date, see note.) Reportable incidents.

(a) The following incidents shall be reported to the applicable board in the event any person is:

(1) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse, without a valid, current license, except as otherwise permitted under Code Section 43-26-12 or 43-26-41, as applicable;

(2) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse under cover of any diploma, license, or record illegally or fraudulently obtained, signed, or issued;

(3) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse during the time the applicable license is suspended, revoked, surrendered, or administratively revoked for failure to renew;

(4) Using any words, abbreviations, figures, letters, title, sign, card, or device implying that such person is a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse unless such person is duly licensed or recognized by the applicable board to practice as such under the provisions of this chapter;

(5) Fraudulently furnishing a license to practice nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse;

(6) Knowingly aiding or abetting any person in violating this chapter;

(7) While holding a license as a nurse, convicted of any felony, crime involving moral turpitude, or crime violating a federal or state law relating to controlled substances or dangerous drugs in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to the charge; or

(8) While holding a license as a nurse, currently or previously displaying an inability to practice nursing as a registered professional nurse, an advanced practice registered nurse, a licensed undergraduate nurse, or a licensed practical nurse with reasonable skill and safety due to use of alcohol, drugs, narcotics, or chemicals.

(b) Minor incidents, as defined by the applicable board, shall not be required to be reported pursuant to this article when the continuing practice by the subject nurse does not pose a risk of harm to a patient or others and can be addressed through corrective action by the nurse's employer. The applicable board shall adopt rules governing reporting of minor incidents. The applicable board may evaluate a complaint and determine that it is a minor incident under this Code section. (Code 1981, § 43-26-53, enacted by Ga. L. 2013, p. 830, § 4/HB 315.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-26-54. (For effective date, see note.) Court order; citation for civil contempt.

The applicable board may seek an order from a court of competent jurisdiction for a report from a nurse as required by Code Section 43-26-51 if one is not forthcoming voluntarily. The applicable board may seek a citation for civil contempt if a court order for a report is not obeyed by such nurse. (Code 1981, § 43-26-54, enacted by Ga. L. 2013, p. 830, § 4/HB 315.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-26-55. (For effective date, see note.) Immunity from liability for good-faith reporting.

(a) No nurse, hospital, nursing home, temporary staffing agency, employer, state agency, or other person required to report a nurse to the applicable board under this article, who, in good faith, either reports or fails to report, shall be subject to civil or criminal liability or discipline for unprofessional conduct for such action or inaction.

(b) A physician or other licensed health care professional who, at the request of the applicable board, examines a nurse shall be immune from suit for damages by the nurse examined if the examining physician or examining health care professional conducted the examination and made findings or diagnoses in good faith. (Code 1981, § 43-26-55, enacted by Ga. L. 2013, p. 830, § 4/HB 315.)

Editor’s notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

CHAPTER 28

OCCUPATIONAL THERAPISTS

43-28-6. Service of process and documents on division director.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). Code section, see 28 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this

CHAPTER 29

DISPENSING OPTICIANS

43-29-4. Board records and seal.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). Code section, see 28 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this

CHAPTER 30

OPTOMETRISTS

Sec.		Sec.
43-30-1.	Definitions.	trists; forfeiture of certificate
43-30-8.	Biennial registration; educational programs for optome-	upon failure to comply; rein-
		statement of certificate.

43-30-1. Definitions.

As used in this chapter, the term:

- (1) “Board” means the State Board of Optometry.
- (2)(A) “Optometry” means the art and science of visual care and is declared to be a learned profession. The practice of optometry consists of the diagnosis and interpretation of the visual behavior of the human organism by the employment of any means other than surgery. The practice of optometry further consists of the

correction of visual anomalies through the prescribing, employment, and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, and visual training, light frequencies, and any other means or methods for the relief, correction, or remedy of any insufficiencies or abnormal conditions of the human visual organism, other than surgery. Optometrists are prohibited from using nondiagnostic lasers. Nothing in this chapter shall prohibit the use, administration, or prescription of pharmaceutical agents for diagnostic purposes and treatment of ocular disease in the practice of optometry by optometrists who have received pharmacological training and certification from a properly accredited institution of higher learning and who are certified by the board to use pharmaceutical agents for diagnostic and treatment purposes. Only a doctor of optometry who:

- (i) Is already certified for using pharmaceutical agents for diagnostic purposes;
- (ii) Has passed or passes an examination approved by the board which tests knowledge of pharmacology for treatment and management of ocular diseases;
- (iii) Is certified in coronary pulmonary resuscitation (CPR); and
- (iv) Maintains at least \$1 million in malpractice insurance coverage

shall be certified to use pharmaceutical agents for treatment purposes.

(B) The board shall establish by rule a list, which may be modified from time to time, of pharmaceutical agents which optometrists shall be allowed to use for treatment purposes.

(C) A doctor of optometry shall not administer any pharmaceutical agent by injection.

(D) Pharmaceutical agents which are used by a doctor of optometry for treatment purposes and administered orally may only be:

- (i)(I) Nonnarcotic oral analgesics and hydrocodone and Schedule III or Schedule IV controlled substances which are oral analgesics;
- (II) Used for ocular pain; and
- (III) Used for no more than 72 hours without consultation with the patient's physician; provided, however, that with respect to hydrocodone, used for no more than 48 hours without consultation with the patient's physician; or

(ii) Antibiotics, antivirals, corticosteroids, antifungals, antihistamines, or antiglaucoma agents related to the diagnosis or treatment of diseases and conditions of the eye and adnexa oculi except Schedule I or Schedule II controlled substances; provided, however, that a doctor of optometry shall not be authorized to administer pharmaceutical agents by injection. Doctors of optometry using such pharmaceutical agents shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts; provided, however, that a doctor of optometry shall not be authorized to treat systemic diseases.

(E) Pharmaceutical agents which are used by a doctor of optometry for treatment purposes and administered topically shall be subject to the following conditions only when used for the treatment of glaucoma:

(i) If the pharmaceutical agent is a beta blocker, an optometrist certified to use pharmaceutical agents for treatment purposes must take a complete case history and determine whether the patient has had a physical examination within the past year. If the patient has not had such a physical examination or if the patient has any history of congestive heart failure, bradycardia, heart block, asthma, or chronic obstructive pulmonary disease, that patient must be referred to a person licensed under Chapter 34 of this title for examination prior to initiating beta blocker therapy;

(ii) If the glaucoma patient does not respond to the topically administered pharmaceutical agents after 60 days of treatment, that patient must be referred to an ophthalmologist;

(iii) If the patient is diagnosed as having closed angle glaucoma, the patient shall be immediately referred to an ophthalmologist; and

(iv) If the pharmaceutical agent is oral corticosteroids, an optometrist certified to use pharmaceutical agents for treatment purposes must take a complete case history and determine whether the patient has had a physical examination within the past year and must not prescribe oral corticosteroids for a patient with any condition for which oral corticosteroids are contraindicated, and in no event shall such oral corticosteroids be prescribed for more than 14 days.

(F) Doctors of optometry using pharmaceutical agents for treatment purposes shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts.

(G) Any doctor of optometry who uses a pharmaceutical agent, except under the conditions specified therefor by this chapter and any other law, shall be guilty of a misdemeanor unless a greater penalty is otherwise provided by law.

(H) Nothing in this chapter shall be construed to allow a doctor of optometry to dispense pharmaceutical agents to patients. (Ga. L. 1916, p. 83, § 1; Code 1933, § 84-1101; Ga. L. 1956, p. 94, § 1; Ga. L. 1980, p. 47, § 1; Ga. L. 1988, p. 34, § 1; Ga. L. 1994, p. 853, § 1; Ga. L. 1994, p. 996, § 1; Ga. L. 1995, p. 351, § 1; Ga. L. 2007, p. 551, § 1/SB 17; Ga. L. 2013, p. 639, § 1/HB 235.)

The 2013 amendment, effective July 1, 2013, inserted “and hydrocodone” in subdivision (2)(D)(i)(I); inserted the proviso in subdivision (2)(D)(i)(III); in division (2)(D)(ii), in the first sentence, substituted “Antibiotics, antivirals, corticosteroids” for “Oral and topical antibiotics, antivirals, topical steroids” and

added the proviso at the end, in the second sentence, deleted “oral and topical” preceding “pharmaceutical” near the beginning; added “; and” at the end of division (2)(E)(iii); and added division (2)(E)(iv).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, “and” was deleted from the end of division (2)(E)(ii).

JUDICIAL DECISIONS

Insurer could not require optometrists to obtain materials from insurer. — Insurer’s requirement that independent optometrists obtain covered materials from the insurer violated O.C.G.A. § 33-24-59.12(c)(2) because: (1) insureds were required to obtain the ma-

terials from the insurer even though O.C.G.A. § 43-30-1(2)(A) allowed the optometrists to provide this service; and (2) the subsection’s intent was not merely to avoid the necessity of a physician’s referral. *Spectera, Inc. v. Wilson*, 317 Ga. App. 64, 730 S.E.2d 699 (2012).

43-30-8. Biennial registration; educational programs for optometrists; forfeiture of certificate upon failure to comply; reinstatement of certificate.

(a) Each person practicing optometry shall register biennially with the division director by completing and filing a form to be furnished by the board.

(b) The board may approve educational programs to be held within or outside this state. The board shall approve only such educational programs as are available to all persons practicing optometry in the state on a reasonable nondiscriminatory fee basis. Any request for board approval of an educational program shall be submitted in a timely manner with due regard for the necessity of investigation and consideration by the board. The board may contract with institutions of higher learning, professional organizations, or qualified individuals for the providing of programs that meet this requirement; and such programs shall be self-sustaining by the individual fees set and collected by the provider of the program. The minimum number of

hours of continuing education required shall be fixed by the board by February 1 of each calendar year. In no instance may the board require a greater number of hours of study than are available at approved courses held within the state; and the board is authorized to waive this requirement in cases of certified illness or undue hardship.

(c) Failure to register, to pay the registration fee, or to submit satisfactory proof of training shall forfeit the certificate of the delinquent optometrist; but a practitioner's certificate may be restored upon payment of all delinquent registration fees, a penalty as established by the board, and the submission of satisfactory proof of training. (Ga. L. 1933, p. 202, § 1; Code 1933, § 84-1109; Ga. L. 1956, p. 691, § 7; Ga. L. 1960, p. 961, § 2; Ga. L. 1971, p. 234, § 1; Ga. L. 1976, p. 185, § 2; Ga. L. 1988, p. 34, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 639, § 2/HB 235.)

The 2013 amendment, effective July 1, 2013, deleted the former last sentence of subsection (b), which read: "Continuing education requirements fixed by the board pursuant to this chapter shall not apply to persons practicing optometry who are 65 or more years of age."

CHAPTER 31

PECAN DEALERS AND PROCESSORS

Sec.
43-31-1 through 43-31-8 [Repealed].

43-31-1 through 43-31-8.

Reserved. Repealed by Ga. L. 2013, p. 797, § 7/HB 268, effective July 1, 2013.

Editor's notes. — This chapter consisted of Code Sections 43-31-1 through 43-31-8, relating to pecan dealers and processors, and was based on Ga. L. 1943, p. 549, §§ 1, 1A, 2-4, 6-8.

CHAPTER 33

PHYSICAL THERAPISTS

43-33-9. Division director as secretary of board; subpoena power; service of process and documents.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). Code section, see 28 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this

43-33-18. Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses; immunity for violation reporters.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). Code section, see 28 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this

CHAPTER 34

PHYSICIANS, ACUPUNCTURE, PHYSICIAN ASSISTANTS, CANCER AND GLAUCOMA TREATMENT, RESPIRATORY CARE, CLINICAL PERFUSIONISTS, AND ORTHOTICS AND PROSTHETICS PRACTICE

Article 1

Georgia Composite Medical Board

- Sec.
- 43-34-5. Election of board officers; reimbursement of members; meetings; powers and duties; no restriction on licenses.
- 43-34-7. Maintenance of roster; confidentiality.
- 43-34-11. Continuing education requirement.

Article 2

Medical Practice

- 43-34-29.1. Administrative medicine licenses; definitions; requirements; rules of board.
- 43-34-29.2. Educational certificates for out-of-state physicians participating in educational training requiring patient care.

Article 7

Clinical Perfusionists

- Sec.
- 43-34-171. Definitions.

Article 10

Pain Management Clinic

- 43-34-280. Short title.
- 43-34-281. Legislative intent.
- 43-34-282. Definitions.
- 43-34-283. Licensure requirements.
- 43-34-284. Denial, suspension, and revocation of licenses.
- 43-34-285. Notice to the board upon the occurrence of certain events.
- 43-34-286. Registration of clinics dispensing controlled substances.
- 43-34-287. Renewal of licenses.
- 43-34-288. Penalty for violation of article.

Sec.	Sec.
43-34-289. Annual notification regarding use of Schedule II or III controlled substances.	43-34-290. Confidentiality of records.

ARTICLE 1

GEORGIA COMPOSITE MEDICAL BOARD

43-34-5. Election of board officers; reimbursement of members; meetings; powers and duties; no restriction on licenses.

(a) The board shall meet and shall annually elect a chairperson and vice chairperson. Each member of the board may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within the state. Each board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the mileage allowance for the use of a personal car equal to that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by board members are subject to approval of the chairperson and executive director. Out-of-state travel by board members must be approved by the board chairperson and the executive director.

(b) The board shall hold regular meetings each month, unless in the discretion of the chairperson it is deemed unnecessary for a particular month. Called meetings may be held at the discretion of the chairperson.

(c) The board shall have the following powers and duties:

(1) To adopt, amend, and repeal such rules and regulations in accordance with this chapter necessary for the proper administration and enforcement of this chapter;

(2) To adopt a seal by which the board shall authenticate the acts of the board;

(3) To establish a pool of qualified physicians to act as peer reviewers and expert witnesses and to appoint or contract with physicians professionally qualified by education and training, medical associations, or other professionally qualified organizations to serve as peer reviewers; provided, however, that no licensing, inves-

tigative, or disciplinary duties or functions of the board may be delegated to any medical association or related entity by contract or otherwise;

(4) To employ a medical director and other staff to implement this chapter and provide necessary and appropriate support who shall be subject to the same confidentiality requirements of the board;

(5) To keep a docket of public proceedings, actions, and filings;

(6) To set its office hours;

(7) To set all reasonable fees by adoption of a schedule of fees approved by the board. The board shall set such fees sufficient to cover costs of operation;

(8) To establish rules regarding licensure and certification status, including, but not limited, to inactive status, as the board deems appropriate;

(9) To issue, deny, or reinstate the licenses, certificates, or permits of duly qualified applicants for licensure, certification, or permits under this chapter;

(10) To revoke, suspend, issue terms and conditions, place on probation, limit practice, fine, require additional medical training, require medical community service, or otherwise sanction licensees, certificate holders, or permit holders;

(11) To renew licenses, certificates, and permits and set renewal and expiration dates and application and other deadlines;

(12) To approve such examinations as are necessary to determine competency to practice under this chapter;

(13) To set examination standards, approve examinations, and set passing score requirements;

(14) To adopt necessary rules concerning proceedings, hearings, review hearings, actions, filings, depositions, and motions related to uncontested cases;

(15) To initiate investigations for the purposes of discovering violations of this chapter;

(16) To administer oaths, subpoena witnesses and documentary evidence including medical records, and take testimony in all matters relating to its duties;

(17) To conduct hearings, reviews, and other proceedings according to Chapter 13 of Title 50;

(18) To conduct investigative interviews;

(19) To issue cease and desist orders to stop the unlicensed practice of medicine or other profession licensed, certified, or permitted under this chapter and impose penalties for such violations;

(20) To request injunctive relief or refer cases for criminal prosecution to appropriate enforcement authorities;

(21) To release investigative or applicant files to another enforcement agency or lawful licensing authority in another state;

(22) To sue and be sued in a court of competent jurisdiction;

(23) To enter into contracts;

(24) To license and regulate pain management clinics;

(25) To establish minimum standards for prescribing controlled substances for pain management; and

(26) To accept any gifts, grants, donations, and other funds, including funds from the disposition of forfeited property to the extent permitted by applicable law, to assist in enforcing this chapter.

(d) A license issued by the board shall not be limited or restricted to a particular medical specialty. (Ga. L. 1913, p. 101, § 5; Ga. L. 1933, p. 197, § 1; Code 1933, § 84-905; Ga. L. 1962, p. 611, § 1; Ga. L. 1974, p. 1156, § 3; Code 1981, § 43-34-24; Ga. L. 1999, p. 296, § 13; Code 1981, § 43-34-5, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2013, p. 515, § 1/HB 178.)

The 2013 amendment, effective July 1, 2013, deleted “and” at the end of paragraph (c)(22); substituted a semicolon for a period at the end of paragraph (c)(23); and added paragraphs (c)(24) through (c)(26).

43-34-6. Board as an independent agency; executive director; meetings and hearings; licenses, certificates, and permits; investigations; venue; credit to veterans; annual report.

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U.L. Rev. 131 (2011).

43-34-7. Maintenance of roster; confidentiality.

The executive director shall prepare and maintain a roster containing the names and business addresses of all current licensees, certificate holders, and permit holders for each of the various professions regulated by the Georgia Composite Medical Board. A copy of the roster shall be available to any person upon request at a fee prescribed by the board sufficient to cover the cost of printing and distribution. The following shall be treated as confidential, not subject to Article 4 of

Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the approval of the board:

- (1) Applications and other personal information submitted by applicants, except to the applicant, the staff, and the board;
- (2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and the board;
- (3) Examination questions and other examination materials, except to the staff and the board; and
- (4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes; provided, however, that such deliberations may be released only to another state or federal enforcement agency or lawful licensing authority. Releasing the documents pursuant to this paragraph shall not subject any otherwise privileged documents to the provisions of Article 4 of Chapter 18 of Title 50. (Code 1981, § 43-34-7, enacted by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2012, p. 218, § 12/HB 397.)

<p>The 2012 amendment, effective April 17, 2012, substituted “Article 4 of Chapter 18 of Title 50” for “Code Section 50-18-70” in paragraph (4).</p>	<p>Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).</p>
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43-34-8. Authority to refuse license, certificate, or permit or issue discipline; suspension; restoration; investigations; evidentiary privileges; closed hearings; immunity for reporting; failure to appear; publication of final disciplinary actions.

<p>Cross references. — Requirement to determine probable gestational age of unborn child, § 31-9B-2.</p>	<p>dence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).</p>
<p>Law reviews. — For article, “Evi-</p>	

RESEARCH REFERENCES

ALR. — Pretrial discovery in disciplinary proceedings against physician, 65 ALR6th 295.

43-34-11. Continuing education requirement.

(a)(1) The board shall be authorized to require persons seeking renewal of a license, certificate, or permit under this chapter to complete board approved continuing education of not less than 40 hours biennially. The board shall be authorized to approve courses

offered by institutions of higher learning, specialty societies, or professional organizations, including, but not limited to, the American Medical Association, the National Medical Association, and the American Osteopathic Association, the number of hours required, and the category in which these hours should be earned. This paragraph shall not apply to respiratory care professionals, persons seeking renewal of certification as respiratory care professionals, clinical perfusionists, persons seeking renewal of licensure as a clinical perfusionist, licensed orthotists or prosthetists, or persons seeking renewal of licensure as an orthotist or prosthetist.

(2) The board shall be authorized to require persons seeking renewal of certification as respiratory care professionals under Article 6 of this chapter to complete board approved continuing education. The board shall be authorized to establish the number of hours of continuing education required biennially for renewal of certification as a respiratory care professional and the categories in which these hours should be earned. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations. Any action taken by the board pursuant to this paragraph shall be taken in conformity with the provisions of Code Section 43-34-143.

(3) The board shall be authorized to require persons seeking renewal of licensure as clinical perfusionists under Article 7 of this chapter to complete board approved continuing education. The board shall be authorized to establish the number of hours of continuing education required biennially for renewal of licensure as a clinical perfusionist and the categories in which these hours should be earned. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations. Any action taken by the board pursuant to this paragraph shall be taken in conformity with the provisions of Code Section 43-34-172.

(4) The board shall be authorized to require persons seeking renewal of licensure to practice orthotics or prosthetics under Article 8 of this chapter to complete board approved continuing education. The board shall be authorized to establish the number of hours of continuing education required biennially for renewal of licensure to practice orthotics or prosthetics and the categories in which these hours should be earned, however, the maximum number of hours of continuing education required for renewal of licensure shall not exceed 40 hours. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations. Any action taken by the board pursuant to this paragraph shall be taken in conformity with the provisions of subsection (a) of Code Section 43-34-200.

(b)(1) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or in cases where physicians or physician assistants are serving in fellowships, new specialty residencies, postgraduate specialty programs, the United States Congress or Georgia General Assembly, or under such other circumstances as the board deems appropriate.

(2) The board shall require no more than 20 hours of continuing education annually for retired physicians who have an active license and who provide uncompensated health care services pursuant to Code Section 43-34-41 or Article 8 of Chapter 8 of Title 31; provided, however, that the board shall be authorized to require up to 40 hours of continuing education for retired physicians who have not had an active license to practice medicine for up to five years.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each licensing, certification, permit, and renewal cycle which begins after the 1990-1991 renewal. (Code 1981, § 43-34-3, enacted by Ga. L. 1990, p. 689, § 1; Ga. L. 1996, p. 235, § 1; Ga. L. 1997, p. 403, § 1; Ga. L. 2007, p. 353, § 1/HB 626; Ga. L. 2008, p. 324, § 43/SB 455; Code 1981, § 43-34-11, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 779, § 1D/SB 100; Ga. L. 2013, p. 751, § 1/HB 68.)

The 2013 amendment, effective July 1, 2013, added “, licensed orthotists or prosthetists, or persons seeking renewal of licensure as an orthotist or prosthetist” at the end of the last sentence of paragraph (a)(1); and added paragraph (a)(4).

ARTICLE 2

MEDICAL PRACTICE

43-34-25. Delegation of certain medical acts to advanced practice registered nurse; construction and limitations of such delegation; definitions; conditions of nurse protocol; issuance of prescription drug orders.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-34-26.1. Influenza vaccine protocol agreements.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-34-29.1. Administrative medicine licenses; definitions; requirements; rules of board.

(a) As used in this Code section, the term:

(1) “Administrative medicine” means administration or management utilizing the medical and clinical knowledge, skill, and judgment of a licensed physician capable of affecting the health and safety of the public or any person but shall not include the practice of medicine.

(2) “Administrative medicine license” means a license issued pursuant to this Code section to engage in the practice of administrative medicine.

(b) An applicant for an administrative medicine license shall meet all of the requirements for issuance of a license under Code Section 43-34-26.

(c) An administrative medicine licensee shall be subject to the provisions of this article and the rules of the board in the same manner as a person holding full licensure under this article; provided, however, that such licensee shall not be authorized to engage in the practice of medicine.

(d) The board shall adopt rules for the issuance of an administrative medicine license that limits the licensee to the practice of administrative medicine. The board’s rules adopted pursuant to this Code section shall include the following provisions:

- (1) Eligibility for the license;
- (2) Issuance and renewal of the license;
- (3) The fees applicable to the license;
- (4) Continuing education requirements; and
- (5) The scope of practice of a person who holds the license.

(e) An individual with an administrative medicine license who seeks to practice medicine under an unrestricted license shall demonstrate to the satisfaction of the board that the licensee has the clinical competence to practice medicine under an unrestricted license and meets all applicable eligibility requirements for a license as required pursuant to Code Section 43-34-26 and by the board, which may include, but not be limited to, requiring the licensee to pass any examination or examinations the board deems necessary and requiring clinical experience.

(f) This Code section shall have no effect on any person holding an unrestricted license issued pursuant to this article prior to July 1, 2013; provided, however, that the license of any physician who has agreed to

a board order restricting the license to administrative medicine based solely on the failure to meet the licensure requirement to be engaged in the active practice of medicine, upon request of the physician, may be converted to an administrative medicine license and the board order regarding such physician shall be terminated, provided that the only requirement of the order is the restriction to administrative medicine. (Code 1981, § 43-34-29.1, enacted by Ga. L. 2013, p. 836, § 1/HB 317.)

Effective date. — This Code section became effective July 1, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, “prior to July 1, 2013” was substituted for “prior to the effective date of this Code section” in subsection (f).

Editor’s notes. — Former Code Section 43-34-29.1 was redesignated as Code Section 43-34-29 by Ga. L. 2009, p. 859, § 1/HB 509.

43-34-29.2. Educational certificates for out-of-state physicians participating in educational training requiring patient care.

The board may issue, in its discretion, an educational certificate to a licensed physician of another state or foreign country to participate in educational training in this state that requires patient care, in accordance with board rules. (Code 1981, § 43-34-29.2, enacted by Ga. L. 2013, p. 836, § 1/HB 317.)

Effective date. — This Code section became effective July 1, 2013.

ARTICLE 4

PHYSICIAN ASSISTANTS

43-34-103. Application for assistant; number of assistants; job descriptions; duties; receipt of samples; employment by nonpracticing physicians; delegated authority; temporary practice agreements; assistance during emergencies; pronouncement of death.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

ARTICLE 7

CLINICAL PERFUSIONISTS

43-34-171. Definitions.

As used in this article, the term:

(1) “Advisory committee” means the committee appointed pursuant to Code Section 43-34-180.

(2) “Board” means the Georgia Composite Medical Board.

(3) “Extracorporeal circulation” means the diversion of a patient’s blood through a heart-lung machine or a similar device that assumes the function of the patient’s heart, lungs, kidneys, liver, or other organ.

(4) “License” means a license to practice as a licensed clinical perfusionist or provisional licensed clinical perfusionist.

(5) “Licensed clinical perfusionist” means a person licensed as such pursuant to this article.

(6) “Perfusion” means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, or respiratory system or other organ, or a combination of such activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the order and supervision of a physician, including, but not limited to:

(A) Extracorporeal support, including:

(i) Cardiopulmonary bypass for adult, pediatric, and neonatal patients;

(ii) Cardiopulmonary bypass for congenital and acquired cardiovascular disorders;

(iii) Extracorporeal circulatory support for renal, neurological, hepatic, and vascular surgery;

(iv) Extracorporeal resuscitation; and

(v) Extracorporeal circulation for long-term support of failing respiratory or cardiac function, or both;

(B) Associated extracorporeal support functions, including:

(i) Myocardial protection;

(ii) Hemofiltration and hemodialysis;

(iii) Anticoagulation and hemostasis monitoring, analysis, and intervention;

(iv) Thermal regulation, including hypothermia and hyperthermia;

(v) Blood gas and blood chemistry monitoring, analysis, and intervention;

- (vi) Physiological monitoring, analysis, and intervention; and
 - (vii) Administration of blood components, pharmaceuticals, chemotherapeutics, and anesthetic agents as directed by a licensed physician;
- (C) Heart failure therapy and support, including:
- (i) Ventricular assist device management;
 - (ii) Intra-aortic balloon counterpulsation;
 - (iii) Temporary pacemaker management;
 - (iv) External counterpulsation;
 - (v) Transportation of patient on extracorporeal support; and
 - (vi) Periodic flow augmentation therapy;
- (D) Blood management, including:
- (i) Autotransfusion;
 - (ii) Platelet concentrate; and
 - (iii) Nondifferentiated progenitor cell harvest; and
- (E) Other clinical functions, including:
- (i) Isolated limb and organ perfusion;
 - (ii) Isolated limb and organ delivery of chemotherapeutics, progenitor cells, gene therapy vectors, and related matters;
 - (iii) Organ preservation;
 - (iv) Thermogenic lavage;
 - (v) Electrophysiological analysis; and
 - (vi) Intravascular membrane oxygenation.

Nothing in this paragraph shall be construed to prevent any licensed health care professional from performing any functions for which such health care professional is legally authorized to perform.

(7) “Perfusion protocols” means perfusion related policies and protocols developed or approved by a licensed health care facility or a physician through collaboration with administrators, licensed clinical perfusionists, and other health care professionals.

(8) “Physician” means a person licensed to practice medicine under Article 2 of this chapter.

(9) “Provisional licensed clinical perfusionist” means a person provisionally licensed pursuant to this article. (Code 1981,

§ 43-34-171, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 779, § 1E/SB 100; Ga. L. 2012, p. 775, § 43/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in division (6)(B)(vii).

ARTICLE 9

COSMETIC LASER SERVICES

Delayed effective date. — Ga. L. 2007, p. 626, § 2, provides that this article, as amended by Ga. L. 2009, p. 859, § 1, and Ga. L. 2009, p. 989, §§ 1-6, becomes effective only when funds are specifically appropriated for purposes of this Act in a General Appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were not appropriated at the 2007, 2008, 2009, 2010, 2011, 2012, or 2013 session of the General Assembly.

ARTICLE 10

PAIN MANAGEMENT CLINIC

Effective date. — This article became effective July 1, 2013.

43-34-280. Short title.

This article shall be known and may be cited as the “Georgia Pain Management Clinic Act.” (Code 1981, § 43-34-280, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-281. Legislative intent.

(a) This article is enacted for the purpose of safeguarding the public health, safety, and welfare by providing for state administrative control, supervision, and regulation of pain management clinics. It is the intention of the General Assembly that people be able to obtain appropriate and safe medical care to treat conditions in which the control of pain is an element. However, the illegal and improper distribution of controlled substances is a growing problem in this state. Licensure and regulation of pain management clinics will better protect the public from criminal activities associated with the illegal distribution of controlled substances as well as provide for a safer place for people to obtain appropriate medical treatment by requiring certain minimum training of practitioners and by the regulation of pain management clinics.

(b) Nothing in this article shall be construed to limit the authority and regulations of the board relating to pain management as such

authority and regulations existed on June 30, 2013. (Code 1981, § 43-34-281, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-282. Definitions.

As used in this article, the term:

(1) “Annual patient population” means persons seen by a clinic or practice in a 12 month calendar year but shall not include persons that are patients of a nursing home, home health agency, or hospice licensed pursuant to Chapter 7 of Title 31.

(2) “Board” means the Georgia Composite Medical Board created by Code Section 43-34-2.

(3) “Chronic pain” means physical pain treated for a period of 90 days or more in a year but shall not include perioperative pain, which shall mean pain immediately preceding and immediately following a surgical procedure, when such perioperative pain is being treated in connection with a surgical procedure by a licensed health care professional acting within the scope of his or her license.

(4) “License” means a valid and current certificate of registration issued by the board pursuant to this article which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.

(5) “Licensee” means any person holding a license under this article.

(6) “Nonterminal condition” means a medical condition which is reversible, where there is a reasonable hope of recovery, and where the patient’s medical prognosis is a life expectancy of two years or more.

(7) “Pain management clinic” means a medical practice advertising “treatment of pain” or utilizing “pain” in the name of the clinic or a medical practice or clinic with greater than 50 percent of its annual patient population being treated for chronic pain for nonterminal conditions by the use of Schedule II or III controlled substances. This term shall not include any clinic or practice owned, in whole or in part, or operated by a hospital licensed pursuant to Chapter 7 of Title 31 or by a health system or any ambulatory surgical center, skilled nursing facility, hospice, or home health agency licensed pursuant to Chapter 7 of Title 31.

(8) “Person” means a natural person.

(9) “Physician” means a person who possesses a current, unrestricted license to practice medicine in the State of Georgia pursuant

to Article 2 of this chapter; who, during the course of his or her practice, has not been denied the privilege of prescribing, dispensing, administering, supplying, or selling any controlled substance; and who has not, during the course of his or her practice, had board action taken against his or her medical license as a result of dependency on drugs or alcohol. (Code 1981, § 43-34-282, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-283. Licensure requirements.

(a) On and after July 1, 2013, all pain management clinics shall be licensed by the board and shall biennially renew their license with the board. In the event that physicians in a pain management clinic practice at more than one location, each such location shall be licensed by the board, and such license shall be nontransferable.

(b)(1) All pain management clinics shall be owned by physicians licensed in this state.

(2) This subsection shall not apply to any pain management clinic in existence on June 30, 2013, which is jointly owned by one or more physician assistants or advanced practice registered nurses and one or more physicians; provided, however, that any physician assistant or advanced practice registered nurse with an ownership interest in such pain management clinic shall be subject to all requirements which owners of pain management clinics are subject to under this article.

(3) This subsection shall not apply to any pain management clinic in existence on June 30, 2013, which is not majority owned by physicians licensed in this state; provided, however, that the person or entity that owns such pain management clinic shall not operate more than one licensed pain management clinic within this state; and provided, further, that any such owner shall be subject to all requirements which owners of pain management clinics are subject to under this article.

(4) Notwithstanding paragraphs (2) and (3) of this subsection, no person who has been convicted of a felony as defined in paragraph (3) of subsection (a) of Code Section 43-34-8 shall own or have any ownership interest in a pain management clinic.

(c) The board may establish minimum standards of continuing medical education for all physicians owning a pain management clinic. All other licensed health care professionals practicing in a pain management clinic may be subject to minimum standards of continuing education established by the respective licensing board for the health care professional.

(d) Upon the filing of an application for a license, the board may cause a thorough investigation of the applicant to be made and such investigation may include a criminal background check; provided, however, that the board shall cause a thorough investigation of a new applicant to be made, and such investigation shall include a background check. If satisfied that the applicant possesses the necessary qualifications, the board shall issue a license. However, the board may issue licenses with varying restrictions to such persons where the board deems it necessary for the purpose of safeguarding the public health, safety, and welfare.

(e) Whenever an applicable rule requires or prohibits action by a pain management clinic, responsibility shall be that of the owner and the physicians practicing in the pain management clinic, whether the owner is a sole proprietor, partnership, association, corporation, or otherwise.

(f) The board shall deny or refuse to renew a pain management clinic license if it determines that the granting or renewing of such license would not be in the public interest.

(g) No pain management clinic shall provide medical treatment or services, as defined by the board, unless a physician, a physician assistant authorized to prescribe controlled substances under an approved job description, or an advanced practice registered nurse authorized to prescribe controlled substances pursuant to a physician protocol is on-site at the pain management clinic.

(h) The board may enter into agreements with other states or with third parties for the purpose of exchanging information concerning licensure of any pain management clinic. (Code 1981, § 43-34-283, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-284. Denial, suspension, and revocation of licenses.

In addition to the authority granted in Code Section 43-34-8, a license obtained pursuant to this article may be denied, suspended, or revoked by the board upon finding that the licensee or a physician practicing at a licensed pain management clinic has:

- (1) Furnished false or fraudulent material information in any application filed under this chapter;
- (2) Been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Had his or her federal registration to prescribe, distribute, or dispense controlled substances suspended or revoked; or

(4) Violated the provisions of this chapter, Chapter 13 of Title 16, or Chapter 4 of Title 26. (Code 1981, § 43-34-284, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-285. Notice to the board upon the occurrence of certain events.

The board shall be notified immediately upon the occurrence of any of the following:

- (1) Permanent closing of a licensed pain management clinic;
- (2) Change of ownership, management, or location of a licensed pain management clinic;
- (3) Change of the physicians practicing in a licensed pain management clinic;
- (4) Any theft or loss of drugs or devices of a licensed pain management clinic;
- (5) Any known conviction of any employee of a licensed pain management clinic of any state or federal drug laws;
- (6) Any known conviction based upon charges of fraud of any employee of a licensed pain management clinic;
- (7) Disasters, accidents, theft, destruction, or loss of records of a licensed pain management clinic required to be maintained by state or federal law or the rules of the board; or
- (8) Any and all other matters and occurrences as the board may require by rule. (Code 1981, § 43-34-285, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-286. Registration of clinics dispensing controlled substances.

All pain management clinics that dispense controlled substances or dangerous drugs shall be registered with the Georgia State Board of Pharmacy as required by Chapter 4 of Title 26. (Code 1981, § 43-34-286, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-287. Renewal of licenses.

(a) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the board prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board. A license which has expired for failure of the holder to renew may be late renewed after application and payment of the prescribed

late renewal fee within the time period established by the board and provided the applicant meets such requirements as the board may establish by rule. Any license which has not been renewed by the end of the late renewal period shall be considered revoked and subject to reinstatement at the discretion of the board after meeting such requirements as the board may establish.

(b) As a condition of license renewal, the board shall require the owners of the pain management clinic and any physicians practicing in the pain management clinic to meet such continuing education and training requirements as may be required by rule. (Code 1981, § 43-34-287, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-288. Penalty for violation of article.

Any person who operates a pain management clinic in the State of Georgia without a license in violation of this article shall be guilty of a felony. (Code 1981, § 43-34-288, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-289. Annual notification regarding use of Schedule II or III controlled substances.

Any hospital which operates an outpatient clinic at its main facility or at any satellite facility with greater than 50 percent of such clinic's annual patient population being treated for chronic pain for nonterminal conditions by the use of Schedule II or III controlled substances shall annually notify the board of such clinic. (Code 1981, § 43-34-289, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-290. Confidentiality of records.

Law enforcement officers, medical examiners, the Georgia Drugs and Narcotics Agency, and the Georgia Bureau of Investigation Medical Examiner's Office, when investigating deaths which may be the result of medication administered or prescribed or a procedure conducted at a pain management clinic as defined by paragraph (7) of Code Section 43-34-282 either by an individual licensed under Chapter 34 of Title 43 or by an individual under the supervision or delegated authority of such person, are authorized to send pertinent records on such deaths to the board. Such records shall be confidential, not subject to Article 4 of Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the approval of the board. (Code 1981, § 43-34-290, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

CHAPTER 35

PODIATRY PRACTICE

Sec.
43-35-3. Definitions.

43-35-3. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Podiatry Examiners.

(2) "License" means a valid and current certificate of registration issued by the division director on behalf of the board which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.

(3) "Licensee" means one who holds a license under this chapter.

(4) "Person" means a human person only.

(5) "Podiatric medicine," which includes chiropody, podiatry, and podiatric medicine and surgery, means that portion of the practice of medicine identified by the acts described in any one or more of the following:

(A) Charging a fee or other compensation, either directly or indirectly, for any history or physical examination of a patient in a person's office or in a hospital, clinic, or other similar facility prior to, incident to, and necessary for the diagnosis and treatment, by primary medical care, surgical or other means, of diseases, ailments, injuries, cosmetic conditions, or abnormal conditions of the human foot and leg. As used in this subparagraph, the term "cosmetic" means a surgical or medical procedure intended to enhance the physical appearance or function of the foot, ankle, or leg, including, but not limited to, skin problems such as blemishes, spider veins, and scar revisions;

(B) Holding oneself out to the public, either directly or indirectly, as being engaged in the practice of podiatric medicine;

(C) Displaying or using a title or abbreviation such as "Doctor of Podiatric Medicine," "D.P.M.," "Foot Doctor," "Foot Specialist," "Foot Surgeon," "Foot and Ankle Surgeon," or other letters, designations, or symbols or signs of any type which expressly or implicitly indicate to the general public that the user renders treatment to the foot, ankle, and leg under the provisions of this chapter;

(D) Performing surgery on the foot or leg of a patient, except that when such surgery is performed under general anesthesia it shall

be permissible only when said surgery is performed at a facility permitted and regulated as a hospital or ambulatory surgical treatment center under Article 1 of Chapter 7 of Title 31 and when said general anesthesia is administered under the direction of a duly licensed physician;

(E) Performing amputations of the toe; or

(F) Performing amputations distal to and including the tarsometatarsal joint but only when performed in a facility permitted and regulated as a hospital or ambulatory surgical treatment center under Article 1 of Chapter 7 of Title 31 and when performed by a podiatrist who is certified by the board in meeting the requirements which shall be established by regulations of the board which have been jointly approved by the board and the Georgia Composite Medical Board.

(6) “Podiatric resident” means a person who is engaged in a postgraduate program of study or practice within this state approved by the board.

(7) “Podiatrist” means a physician and surgeon of the human foot and leg who is subject to this chapter. (Code 1981, § 43-35-3, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2013, p. 779, § 1/HB 192.)

The 2013 amendment, effective July 1, 2013, in subparagraph (5)(A), inserted “cosmetic conditions” near the end of the first sentence, and added the second sentence.

CHAPTER 38

OPERATORS OF PRIVATE DETECTIVE BUSINESSES
AND PRIVATE SECURITY BUSINESSES

43-38-10. Permits to carry firearms; proficiency requirement; exemption from specified laws; denial, refusal to renew, and suspension of permits; effect of license suspension and restoration.

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U.L. Rev. 131 (2011).

CHAPTER 39

PSYCHOLOGISTS

43-39-16. Privileged communications.

Cross references. — Confidential communications, § 24-5-501.

CHAPTER 39A

REAL ESTATE APPRAISERS

Sec.		Sec.	
43-39A-2.	Definitions.		tions; revocation of classification; noncompliance with child support orders; borrowers in default.
43-39A-3.	Georgia Real Estate Appraisers Board; membership; qualifications; recusal for conflict of interest; terms; removal; meetings; compensation.	43-39A-18.	Penalties for violations; unfair trade practices; civil judgments.
43-39A-14.	Required conduct of applicants; refusal of classification; imposition of sanc-	43-39A-18.1.	Alternative disciplinary procedures; citations.

43-39A-2. Definitions.

As used in this chapter, the term:

- (1) “Analysis” means a study of real estate or real property other than one estimating value.
- (2) “Appraisal” or “real estate appraisal” means an analysis, opinion, or conclusion prepared by an appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.
- (3)(A) “Appraisal management company” means a person who for compensation:

(i) Functions as a third-party intermediary between an appraiser and a user of real estate appraisal services;

(ii) Administers a network of appraisers performing real estate appraisal services as independent contractors;

(iii) Enters into an agreement to provide real estate appraisal services with a user of such services and one or more appraisers performing such services as independent contractors; or

(iv) Otherwise serves as a third-party broker of appraisal services.

(B) “Appraisal management company” does not include:

(i) Any person licensed to practice law in this state who orders an appraisal in connection with a bona fide client relationship when that person directly contracts with an appraiser;

(ii) Any person who contracts with an appraiser acting as an independent contractor for the completion of a real estate appraisal assignment and who, upon the completion of such an assignment, cosigns the appraisal report with the appraiser who is acting as an independent contractor;

(iii) Any federal, state, or local government or any of its departments, agencies, or authorities that order appraisals;

(iv) Any person who orders an appraisal on behalf of any federal, state, or local government or its departments, agencies, or authorities as an employee thereof; or

(v) A relocation company.

(4) “Appraisal management services” means services performed by an appraisal management company and may include, but are not limited to, such activities as recruiting appraisers, contracting with appraisers to perform real estate appraisal activity, negotiating fees for appraisals, receiving appraisal orders and appraisal reports, and submitting appraisal reports received from appraisers to clients.

(5) “Appraisal report” means any communication, written or oral, of an appraisal. For purposes of this chapter, the testimony of an appraiser dealing with the appraiser’s analyses, conclusions, or opinions concerning identified real property is deemed to be an oral appraisal report.

(6) “Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal assignment, except that an examination of an appraisal for grammatical, typographical, or other similar errors shall not be an appraisal review.

(7) “Appraisal Subcommittee” means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. Section 3301, et seq.), as amended.

(8) “Appraiser” means any person who, for a valuable consideration or with the intent or expectation of receiving the same from another, engages in real estate appraisal activity on any type of real estate or real property.

(9) “Appraiser classification” means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category, including the registration of real estate appraisal management companies.

(10) “Appraiser panel” means a group of independent appraisers selected to perform an appraisal valuation or analysis for an appraisal management company.

(11) “Board” means the Georgia Real Estate Appraisers Board established pursuant to the provisions of this chapter.

(12) “Certified appraisal” or “certified appraisal report” means an appraisal or appraisal report given, signed, and certified as such by a certified real estate appraiser. A certified appraisal or appraisal report represents to the public that it meets the appraisal standards defined in this chapter.

(13) “Client” means any person who enters into an agreement with an appraiser or an appraisal management company for the performance of real estate appraisal activity.

(14) “Commission” means the Georgia Real Estate Commission created in Code Section 43-40-2.

(15) “Commissioner” means the real estate commissioner.

(16) “Controlling person” means:

(A) An owner, officer, or director of a corporation, partnership, or other business entity seeking to offer appraisal management services in this state;

(B) An individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals; or

(C) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(17) “Evaluation assignment” means an engagement for which an appraiser is employed or retained to give an analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate or identified real property.

(18) “Federally related transaction” means any real estate related financial transaction which (A) a federal financial institutions regu-

latory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) requires the services of an appraiser.

(19) “Independent appraisal assignment” means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.

(20) “Owner” means any person who owns 5 percent or more of an appraisal management company.

(21) “Person” means an individual, partnership, limited liability company, limited partnership, corporation, association, or any other legal or commercial entity.

(22) “Real estate” means condominiums and leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere. Such term also includes any structure or structures equipped with the necessary service connections and made so as to be readily moveable as a unit or units when such a structure is affixed to land.

(23) “Real estate appraisal activity” means the act or process of valuation of real estate or real property and preparing an appraisal report.

(24) “Real estate related financial transaction” means any transaction involving:

(A) The sale, lease, purchase, or exchange of or investment in real estate or real property or the financing thereof;

(B) The refinancing of real estate or real property; and

(C) The use of real estate or real property as security for a loan or investment, including mortgage backed securities.

(25) “Real property” means one or more defined interests, benefits, and rights inherent in the ownership of real estate.

(25.1) “Relocation company” means a business entity that acts as an agent or contractor of an employer for the purposes of relocating the employees of such employer and determining an anticipated sales price of the residences of the employees being relocated.

(26) “Specialized services” means services, other than independent appraisal assignments which are performed by an appraiser. Specialized services may include marketing, financing, and feasibility studies; valuations; analyses; and opinions and conclusions given in

connection with activities such as real estate brokerage, mortgage banking, real estate counseling, and real estate tax counseling.

(27) “State” means any state, district, territory, possession, or province of the United States or Canada and any sovereign nation or any political subdivision of such sovereign nation.

(28) “Valuation” means an estimate of the value of real estate or real property.

(29) “Valuation assignment” means an engagement for which an appraiser is employed or retained to give an analysis, opinion, or conclusion that estimates the value of an identified parcel of real estate or identified real property at a particular point in time. (Code 1981, § 43-39A-2, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 266, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1997, p. 405, § 1; Ga. L. 2003, p. 370, § 1; Ga. L. 2010, p. 765, § 2/HB 1050; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2012, p. 1099, §§ 1, 2/SB 365.)

The 2012 amendment, effective July 1, 2012, deleted “or” at the end of division (3)(iii); substituted “; or” for the period at the end of division (3)(iv); added division (3)(v); and added paragraph (25.1).

43-39A-3. Georgia Real Estate Appraisers Board; membership; qualifications; recusal for conflict of interest; terms; removal; meetings; compensation.

(a) There is created the Georgia Real Estate Appraisers Board, which shall consist of five members. All members must be residents of Georgia. One member shall be a public member. The public member of the board shall not be connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending. Four members shall be real estate appraisers who have been actively engaged in the real estate appraisal business for at least three years. In appointing real estate appraisers to the board, while not automatically excluding other appraisers, the Governor shall give preference to real estate appraisers who do not hold an active, occupational license which authorizes their work in real estate brokerage or mortgage lending activities, who do not have a financial interest in any real estate brokerage firm or mortgage lending firm, and who are not employees of real estate brokerage firms or mortgage lending firms.

(b) The Governor shall appoint the members of the board, subject to confirmation by the Senate, with consideration given to appropriate geographic representation and to areas of appraisal expertise. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate.

(c) A member of the board shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an

investigation authorized by this chapter results in the board's initiating a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," against a member, such member shall be recused from voting on such matter and may not discuss the matter with other board members or be present when the board discusses or votes on such matter.

(d) The term of each member of the board shall be five years, except that one of the successors to the two members first appointed to serve until July 1, 1992, shall be appointed to serve until July 1, 1994, and one of the successors to the two members first appointed to serve until July 1, 1993, shall be appointed to serve until July 1, 1995. In the event of a vacancy, the Governor shall appoint a person to fill such vacancy and the person so appointed shall serve for the remainder of the unexpired term.

(e) Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. The Governor, after giving notice and opportunity for a hearing, may remove from office any member of the board for any of the following:

- (1) Inability to perform or neglecting to perform the duties required of members;
- (2) Incompetence;
- (3) Dishonest conduct; or
- (4) Having a disciplinary sanction other than a citation or a letter of findings authorized by this chapter imposed by any professional licensing agency on such member's right to practice a trade or profession.

(f) The members of the board shall annually elect a chairperson from among the members to preside at board meetings.

(g) The board shall meet at least once each calendar quarter, or as often as is necessary, and remain in session as long as the chairperson shall deem it necessary to give full consideration to the business before the board. A quorum of the board shall be three members. Members of the board or others may be designated by the chairperson of the board, in a spirit of cooperation, to confer with similar boards of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the board in the advancement of the profession and the standards of real estate appraisal activity.

(h) Each member of the board shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and for time actually required in traveling to and from its meetings, not

to exceed one day's traveling time, the sum of \$25.00 and his or her actual and necessary expenses incurred in the performance of official duties.

(i) The commission shall supply staff support for the board. The commissioner shall serve as executive officer of the board. The commissioner shall be charged with the duties and powers as delegated by the board. (Code 1981, § 43-39A-3, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 266, § 2; Ga. L. 1992, p. 1402, § 1; Ga. L. 2000, p. 1527, § 4; Ga. L. 2006, p. 792, § 1/SB 547; Ga. L. 2012, p. 1099, § 3/SB 365.)

The 2012 amendment, effective July 1, 2012, inserted "or a letter of findings" near the middle of paragraph (e)(4).

43-39A-14. Required conduct of applicants; refusal of classification; imposition of sanctions; revocation of classification; noncompliance with child support orders; borrowers in default.

(a) Appraiser classifications shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such manner as to safeguard the interests of the public and only after satisfactory proof of such qualifications has been presented to the board.

(b)(1) As used in this subsection, the term:

(A) "Conviction" means a finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to first offender treatment without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving moral turpitude.

(B) "Felony" means any offense committed:

(i) Within this state and deemed a felony under the laws of this state or under the laws of the United States; or

(ii) In another state and deemed a felony under the laws of that state or the laws of the United States.

(1.1) No person who has a conviction shall be eligible to become an applicant for a license or an approval authorized by this chapter unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction, provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of

any sentence imposed for the last conviction before making application for licensure or approval; and provided, further, that if such individual has a single conviction, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval.

(1.2) A person who has a conviction in a court of competent jurisdiction of this state or any other state shall be eligible to become an applicant for a licensure or an approval authorized by this chapter only if:

(A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval, provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided, further, that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sexual offense, a probation violation, or a crime involving moral turpitude are pending against the person; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(2) Where an applicant for any classification or approval authorized by this chapter has been convicted in a court of competent jurisdiction of this state or any other state of the offense of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to defraud or other like offense or offenses or has been convicted of a felony, a sexual offense, a probation violation, or a crime involving moral turpitude, such conviction in itself may be a sufficient ground for refusal of a classification or approval. An applicant for any classification or approval authorized by this chapter who has been convicted of any offense enumerated in this paragraph may be issued a classification or approval by the board only if:

(A) The time periods identified in paragraph (1.1) of this subsection have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;

(B) No criminal charges are pending against the applicant; and

(C) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interest of the public.

(c) Where an applicant or an appraiser has been found guilty of a violation of the federal fair housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court of competent jurisdiction and after any appeal of such conviction is concluded, such conviction may in itself be a sufficient ground for refusal of an appraiser classification or the imposition of any sanction permitted by this chapter.

(d) Where an applicant or an appraiser has made a false statement of material fact on an application or caused to be submitted or been a party to preparing or submitting any falsified application to the board, such action may, in itself, be a sufficient ground for the refusal, suspension, or revocation of the appraiser classification.

(e) Grounds for suspension or revocation of an appraiser classification, as provided for by this chapter, shall also be grounds for refusal to grant an appraiser classification.

(f) The conduct provided for in subsections (a) through (d) and subsection (h) of this Code section which relates to the denial of an appraiser classification to an applicant shall also be grounds for the imposition of any sanction permitted by this chapter when the conduct is that of an appraiser.

(g) Whenever the board initiates an investigation as provided in Code Section 43-39A-22 to determine whether an appraiser has violated any provision of this chapter or the rules and regulations adopted pursuant to this chapter and such appraiser:

(1) Surrendered or surrenders an appraiser classification to the board;

(2) Allowed or allows an appraiser classification to lapse due to failure to meet education requirements provided by law; or

(3) Allowed or allows an appraiser classification to lapse due to failure to pay any required fees,

the board may issue an order revoking such appraiser's classification. The order shall be effective ten days after the order is served on the appraiser unless the appraiser makes a written request for a hearing before the board, in which event, the board shall file a notice of hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Service shall be accomplished as provided for in Code Section 43-39A-21.

(h) Whenever any occupational licensing body of this state or any other state has disciplined any license or classification of an applicant for any appraiser classification or whenever such an applicant has allowed a license or classification to lapse or has surrendered a license or classification to any occupational licensing body of this state or any other state after that occupational licensing body has initiated an investigation or a disciplinary process regarding such applicant's licensure or classification, such discipline, lapsing, or surrender in itself may be a sufficient ground for refusal of an appraiser classification. Whenever any occupational licensing body of this state or any other state has revoked the license or classification of an applicant for a classification or whenever such an applicant has allowed a license or classification to lapse or has surrendered a license or classification to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license or classification, the board may issue an appraiser classification only if:

(1) At least five years have passed since the date that the applicant's occupational registration, license, or certification was revoked or surrendered;

(2) No criminal charges are pending against the applicant at the time of application; and

(3) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interests of the public.

(i) Whenever any appraiser is convicted of any offense enumerated in subsection (b) of this Code section, such appraiser shall immediately notify the board of that conviction. Such appraiser's appraiser classification shall automatically be revoked 60 days after the conviction unless the appraiser makes a written request to the board for a hearing during that 60 day period. Following any such hearing requested pursuant to this subsection, the board in its discretion may impose upon that appraiser any sanction permitted by this chapter.

(j) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for refusal of a license or suspension of a license. For purposes of this subsection, the hearing and appeal procedures provided for in such Code sections shall be the only such procedures required under this article.

(k) Where an applicant or licensee has been found to be a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295, such finding shall be sufficient grounds for refusal of

a license or suspension of a license. For purposes of this subsection, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this article.

(l) Where the board has previously sanctioned any applicant for a classification under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” such sanction may in itself be a sufficient ground for refusing the classification. (Code 1981, § 43-39A-14, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 4; Ga. L. 1995, p. 1216, § 2; Ga. L. 1996, p. 453, § 14; Ga. L. 1998, p. 1094, § 11; Ga. L. 2000, p. 1527, § 7; Ga. L. 2003, p. 370, § 3; Ga. L. 2007, p. 483, § 4/SB 114; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2012, p. 1099, § 4/SB 365.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of subparagraph (b)(1)(B) for the former provisions, which read “Felony includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.”; in paragraph (b)(1.1), substituted a comma for a semicolon following “conviction” and added “and” preceding “provided”; substituted “this state or any other state” for “this or any other state, district, or territory of the United States, or of a foreign country” in paragraphs (b)(1.2) and (b)(2); in subparagraph (b)(1.2)(A), deleted a comma following “provided that”, and inserted “and” preceding “provided, further,”; substituted “sexual offense” for “sex offense” in subparagraph (b)(1.2)(B) and paragraph (b)(2); substi-

tuted “paragraph (1.1)” for “paragraph (1)” in subparagraph (b)(2)(A); in the undesignated language at the end of subsection (g), substituted “shall” for “will” twice, deleted a comma following “event”, and deleted the former last sentence; in subsection (h), substituted “this state or any other state has disciplined” for “this state, any other state, or any foreign country has sanctioned”, substituted “this state or any other state” for “this state, any other state, or foreign country” three additional times, and substituted “such discipline” for “such sanction”; substituted “shall immediately notify” for “must immediately notify” near the beginning of subsection (i); and substituted “shall be sufficient grounds” for “is sufficient grounds” in the first sentences of subsections (j) and (k), respectively.

43-39A-18. Penalties for violations; unfair trade practices; civil judgments.

(a) In accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” whenever an appraiser classification, a school approval, or an instructor approval has been obtained by false or fraudulent representation, or whenever an appraiser, an approved school, or an approved instructor has been found guilty of a violation of this chapter, of the rules and regulations promulgated by the board, or of any unfair trade practices, including, but not limited to, those listed in this Code section, the board shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew a classification to an applicant;
- (2) Administer a reprimand;

(3) Suspend any classification or approval for a definite period of time or for an indefinite period of time in connection with any condition that may be attached to the restoration of the classification or approval;

(4) Revoke any classification or approval;

(5) Revoke any classification issued to an appraiser and simultaneously issue such appraiser a classification with more restricted authority to conduct appraisals;

(6) Impose on an appraiser, applicant, approved school, or approved instructor monetary assessments in an amount necessary to reimburse the board for administrative, investigative, and legal costs and expenses incurred by the board in conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the “Georgia Administrative Procedure Act”;

(7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as the parties may agree;

(8) Require completion of a course of study in real estate appraisal or instruction; or

(9) Limit or restrict any classification or approval as the board deems necessary for the protection of the public.

Any action taken by the board pursuant to this subsection may, at its discretion, be construed as a “disciplinary sanction” or “sanction” as such terms are used in this chapter.

(b) Appraisers shall not engage in the following unfair trade practices:

(1) Performing any real estate appraisal activity or specialized services which indicate any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin or an intention to make any such preference, limitation, or discrimination;

(2) An act or omission involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially an appraiser or another person or with the intent to injure substantially another person;

(3) Commission of any act of fraud, misrepresentation, or deceit in the making of an appraisal of real estate for which act a final civil or criminal judgment has been rendered;

(4) Engaging in real estate appraisal activity under an assumed or fictitious name not properly registered in this state;

(5) Paying a finder's fee or a referral fee to a person who is not an appraiser in connection with an appraisal of real estate or real property;

(6) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(7) Violation of the confidential nature of governmental records to which an appraiser gained access through employment or engagement as an appraiser by a governmental agency;

(8) Violation of any of the standards for the development or communication of real estate appraisals as promulgated by the board;

(9) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(10) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(11) Accepting an independent appraisal assignment when the employment itself is contingent upon the appraiser's reporting a predetermined estimate, analysis, valuation, or opinion or where the fee to be paid is contingent upon the opinion, conclusions, analysis, or valuation reached or upon the consequences resulting from the appraisal assignment;

(12) Failure to retain for a period of five years the original or a true copy of each appraisal report prepared or signed by the appraiser and all supporting data assembled and formulated by the appraiser in preparing each such appraisal report. The five-year period for retention of records is applicable to each engagement of the services of the appraiser and shall commence upon the date of the delivery of each appraisal report to the client unless, within such five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event the five-year period for the retention of records shall commence upon the date of the final disposition of such litigation;

(13) Failure upon reasonable request of an appraiser to make all records required to be maintained under the provisions of this chapter available to the board for inspection and copying by the board;

(14) Performing any appraisal beyond the scope of authority granted in the appraiser classification held;

(15) Demonstrating incompetency to act as an appraiser in such a manner as to safeguard the interests of the public or any other

conduct, whether of the same or a different character than specified in this subsection, which constitutes dishonest dealing;

(16) Performing or attempting to perform any real estate appraisal activity on property located in another state without first having complied fully with that state's laws regarding real estate appraisal activity;

(17) Providing an oral appraisal report in a federally related transaction;

(18) Utilizing the services of any person in other than a ministerial capacity in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal if such person's appraiser classification is suspended or revoked or if such person does not hold an appraiser classification; or

(19) Performing or attempting to perform any real estate appraisal activity in a federally related transaction without complying with the standards required by the federal financial institutions regulatory agency that regulates the financial transaction for which the appraisal assignment is undertaken.

(c) In a disciplinary proceeding based upon a civil judgment, an appraiser shall be afforded an opportunity to present matters in mitigation and extenuation but may not collaterally attack the civil judgment.

(d) When an appraiser has previously been sanctioned by the board or by any other state's real estate appraiser licensing authority, the board may consider such prior sanction in determining the severity of a new sanction which may be imposed upon a finding that an appraiser has violated any provision of this chapter or any of the rules and regulations of the board. The failure of an appraiser to comply with or to obey a final order of the board may be cause for suspension or revocation of the individual's appraiser classification after opportunity for a hearing. (Code 1981, § 43-39A-18, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 5; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 6, § 43; Ga. L. 1997, p. 405, § 4; Ga. L. 2003, p. 370, § 5; Ga. L. 2012, p. 1099, § 5/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (a), in the introductory paragraph, inserted "classification" near the beginning, substituted a comma for a semicolon following "fraudulent representation" and "Code Section", and de-

leted "or" following "violation of this chapter"; substituted "approved school, or approved instructor" for "school approval, or instructor approval" in paragraph (a)(6); and added the ending undesignated paragraph.

43-39A-18.1. Alternative disciplinary procedures; citations.

(a) It is the intent of the General Assembly to provide the board with disciplinary measures to use as alternatives to the sanctions provided for in subsection (a) of Code Section 43-39A-18. The citation and letter of findings provided for in this Code section shall not be construed as a disciplinary sanction.

(b) Whenever the evidence gathered in an investigation reveals an apparent violation by an appraiser of this chapter, the rules and regulations promulgated by the board, or a standard of conduct, the board, in its discretion, may:

(1) Initiate the process for the imposition of sanctions, as provided for in subsection (a) of Code Section 43-39A-18 and in accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50;

(2) Issue a citation to the appraiser. Such citation, which shall be served personally or by mail, shall give notice to the appraiser of the alleged violation or violations of this chapter, commission rules, or standard or standards of conduct and inform the appraiser of the opportunity to request a contested case hearing to be held in accordance with the procedures established for such hearings by Chapter 13 of Title 50. A citation issued by the board may include an order to complete a course of study in real estate appraisal or instruction or to pay a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations, with fines for multiple violations limited to \$5,000.00 in any one citation, or both. If the appraiser fails to request a hearing within 30 days of the date of service of the citation, the order contained in the citation shall be final. The failure of an appraiser to comply with a final order contained in a citation may be cause for the imposition of a sanction on such person's classification, after notice and opportunity for a hearing; or

(3) Issue a letter of findings to the appraiser if the alleged violation appears to have done no harm to a third party or to the public. Such letter of findings, which shall be served personally or by mail, shall give notice to the appraiser of the alleged violation or violations of this chapter, commission rules, or standard or standards of conduct. A letter of findings shall be confidential and shall not appear on the classification history of an appraiser. A letter of findings shall not be subject to a subpoena in a civil action, shall not constitute a public record or be available for inspection by the public, and shall not be disclosed to any person or agency, except as provided in subsection (d) of Code Section 43-39A-22.

(c) The board is authorized to promulgate rules and regulations to implement this Code section. Such rules may limit the provisions of this

chapter and of its rules and regulations and standards of conduct which may be the basis for the issuance of a citation or a letter of findings. (Code 1981, § 43-39A-18.1, enacted by Ga. L. 1999, p. 715, § 3; Ga. L. 2012, p. 1099, § 6/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (a), in the first sentence, substituted “disciplinary measures to use as alternatives” for “a disciplinary tool which is an alternative”, and, in the second sentence, inserted “and letter of findings” near the beginning, and inserted “disciplinary” near the end; in subsection (b), divided the previous provisions into introductory language and paragraphs (b)(1) and (b)(2), and added a

colon following “discretion, may” at the end of the introductory language; in paragraph (b)(1), substituted “Initiate” for “initiate” at the beginning, and substituted a semicolon for “, or” at the end; in paragraph (b)(2), substituted “Issue” for “issue” at the beginning, and substituted “; or” for a period at the end; added paragraph (b)(3); and added “or a letter of findings” at the end of subsection (c).

CHAPTER 40

REAL ESTATE BROKERS AND SALESPERSONS

Sec.		Sec.	
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43-40-2. Creation of commission; members; meetings; recusal for conflict of interest; removal; compensation; annual report; budget unit.

(a) There is created the Georgia Real Estate Commission, which shall be composed of six members, each of whom shall be appointed by the Governor and confirmed by the Senate for a term of five years. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate. Five of the members shall be licensees who shall have been residents of this state and actively

engaged in the real estate business for five years. The sixth member of the commission shall have no connection with the real estate industry whatsoever but shall have a recognized interest in consumer affairs and in consumer protection concerns.

(b) Members of the commission shall serve until their successors are appointed and qualified. Vacancies on the commission shall be filled by appointment of a successor for the unexpired term of office by the Governor. Four members shall constitute a quorum for the transaction of any business of the commission. The commission shall organize by selecting from its members a chairperson and may do all things necessary and convenient to carry this chapter into effect. The commission shall meet at least once a month, or as often as is necessary, and remain in session as long as the chairperson thereof shall deem it necessary to give full consideration to the business before the commission. Members of the commission or others may be designated by the chairperson of the commission, in a spirit of cooperation and coordination, to confer with similar commissions of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the commission in the advancement of the profession and the standards of the real estate business.

(c) A member of the commission shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the commission's initiating a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," against a member, such member shall be recused from voting on such matter and may not discuss such matter with other commission members or be present when the commission discusses or votes on such matter.

(d) The Governor, after giving notice and an opportunity for a hearing, may remove from office any member of the commission for any of the following:

(1) Inability to perform or neglecting to perform the duties required of members;

(2) Incompetence;

(3) Dishonest conduct; or

(4) Having a disciplinary sanction, other than a citation or a letter of findings authorized by this chapter, imposed by any professional licensing agency on such member's right to practice a trade or profession.

(e) The commission is authorized to pass rules and regulations, not inconsistent with this chapter, relating to the professional conduct of licensees and the administration of this chapter.

(f) Each member of the commission shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and time actually required in traveling to and from its meetings, not to exceed one day's traveling time, the sum of \$25.00 and his or her actual and necessary expenses incurred in the performance of his or her official duties.

(g) The commission, through its chairperson, shall file a written report with the Governor and a copy thereof with both houses of the General Assembly on or before the second Tuesday in January of each year. The Governor may request a preliminary report prior to such an annual report. The report shall include a summary of all actions taken by the commission, a financial report of income and disbursements, staff personnel, and number of persons licensed by the commission. The report shall further delineate steps taken in education and research to disseminate information so that all licensees can be better informed in order to protect the public. The commission shall also outline a program of education and research for each ensuing year, for which a line appropriation shall be requested.

(h) The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act"; provided, however, that the commission shall be assigned for administrative purposes only to the office of the Secretary of State. (Ga. L. 1925, p. 325, §§ 3, 17; Ga. L. 1929, p. 316, § 31; Code 1933, § 84-1404; Ga. L. 1941, p. 342, § 1; Ga. L. 1949, p. 943, § 1; Ga. L. 1968, p. 277, § 1; Ga. L. 1972, p. 1083, § 1; Code 1933, § 84-1405, enacted by Ga. L. 1973, p. 100, § 1; Code 1933, § 84-1426, enacted by Ga. L. 1977, p. 880, § 5; Ga. L. 1978, p. 953, § 1; Ga. L. 1981, p. 1311, § 1; Ga. L. 1985, p. 360, § 2; Ga. L. 2000, p. 1706, § 17; Ga. L. 2006, p. 792, § 4/SB 547; Ga. L. 2012, p. 1099, § 7/SB 365.)

The 2012 amendment, effective July 1, 2012, inserted "or a letter of findings" in paragraph (d)(4).

43-40-4. Office of commissioner; qualifications; restrictions; staff; oath; duties and powers; reimbursement.

(a) There is established within the commission the office of real estate commissioner.

(b) The commissioner shall be a full-time employee of the commission and shall serve as the chief executive officer of the commission. The commission shall in its discretion appoint the commissioner and fix his or her annual salary. Any person, in order to qualify for appointment to the office of commissioner, shall be a person of good moral character and shall possess such qualifications as the commission may require. The commissioner shall hold no interest in any real estate business or

related business while serving as commissioner. The commissioner, with the approval of the commission, may employ and fix the compensation of a secretary, investigators, and other staff to assist the commissioner in his or her duties. Such employees shall not be placed in the classified service as defined by Code Section 45-20-2, provided that nothing in this chapter shall be construed to affect any employee in the classified service as of July 1, 1981.

(c) The commissioner shall take an oath to discharge faithfully the duties of his or her office.

(d) The commissioner shall be charged with the duties and powers as delegated by the commission.

(e) The commissioner shall be allowed reimbursement for travel and other expenses necessarily incurred in the performance of his or her duties, the same as other state officers and employees, and shall receive payment of the same in the manner provided for members of the commission. (Code 1933, § 84-1405, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1979, p. 1203, § 1; Ga. L. 1981, p. 1311, § 2; Ga. L. 1994, p. 97, § 43; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-65/HB 642.)

The 2012 amendment, effective July 1, 2012, inserted “or her” throughout this Code section; and, in subsection (b), substituted “the commissioner” for “him” in the fifth sentence, and in the last sentence, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration”, and deleted “of the State Personnel Administration” preceding “as of July 1, 1981”.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

43-40-6. Seal; records.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-40-8. Qualifications of licensees; course of study for licensed salespersons; lapse; reinstatement; renewal; continuing education; standards for courses.

(a) In order to qualify to become an applicant for a community association manager’s license, an individual shall:

(1) Have attained the age of 18 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

(4) Furnish evidence of completion of at least 25 instructional hours in a community association manager's course of study approved by the commission; and

(5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers who provide community association management services and community association managers after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(b) In order to qualify to become an applicant for a salesperson's license, an individual shall:

(1) Have attained the age of 18 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

(4) Furnish evidence of completion of at least 75 instructional hours in a salesperson's course of study approved by the commission; and

(5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers and salespersons after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(c) In order to qualify to become an applicant for a broker or associate broker's license, an individual shall:

(1) Have attained the age of 21 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

(4) Have maintained a license in active status for at least three of the five years immediately preceding the filing of an application to become a broker;

(5) Furnish evidence of completion of 60 instructional hours in a broker's course of study approved by the commission, provided that if licensed as a community association manager, the applicant shall furnish evidence of completion of an additional 75 instructional hours in courses or a course of study approved by the commission; and

(6) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers after completing the requirements of paragraph (5) of this subsection and after maintaining a license in active status for at least three of the five years immediately preceding such examination.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(d) Upon being issued an original salesperson's license, each salesperson shall be required to furnish the commission, within one year of the issuance of a license, evidence of satisfactory completion of a course of study of at least 25 instructional hours approved by the commission. As a condition of satisfactory completion of this course, the licensee shall stand and pass an examination that the commission approves and that covers the subject matter contained in the course. The license of any salesperson who fails to complete satisfactorily in a timely manner the course provided for in this subsection shall lapse, and the salesperson's wall certificate of licensure and pocket card shall immediately be surrendered to the commission. Any salesperson whose license lapses for failure to complete satisfactorily an approved 25 instructional hour course may reinstate the license in the following manner:

(1) Any salesperson who has enrolled in any approved 25 instructional hour course within one year of the issuance of an original license, has paid all required fees for the course, and has not completed all in-class sessions, required exercises, or examinations for any reason may reinstate the license by completing the course within six months of the lapsing of the license; or

(2) Any salesperson who fails to reinstate a lapsed license as provided in paragraph (1) of this subsection shall complete 25 instructional hours in a course of study approved by the commission and pay such penalty fees as the commission may require through its rules and regulations before making application to reinstate such license.

(e) Except those individuals actively licensed on January 1, 1980, each applicant for renewal of an active license shall furnish to the commission before renewing a license evidence of satisfactorily completing a continuing education course or courses approved by the commission. The length of the course or courses taken by licensees to meet this requirement of continuing education shall total at least six instructional hours for each year of the renewal period established by the commission. The commission shall not require the passing of an examination to meet this requirement. Continuing education courses shall be provided by all educational or duly authorized instructional organizations teaching real estate licensing courses. No licensee whose license has been placed on inactive status shall be allowed to reactivate unless the provisions of this subsection and subsection (g) of Code Section 43-40-12 are met. Individuals serving on active duty in the armed forces of the United States or in the General Assembly may choose not to meet the continuing education requirements of this subsection while on active duty or during their terms of office. Members of the armed forces or the General Assembly who choose to exercise this temporary exemption option and whose term of active duty or of office exceeds two years shall be required to complete the 25 instructional hour course referenced in subsection (d) of this Code section within six months of the conclusion of their active duty or term of office.

(f) Instructors in all of the approved courses shall be approved by the commission and, where the commission deems necessary, receive any special instruction the commission may require.

(g) Failure to complete any of the educational requirements as provided in this Code section shall be grounds for denial of a license or denial of renewal of a license without further hearing. No fees or portion of fees paid shall be refunded if a licensee fails to meet the continuing education provisions of subsections (d) and (e) of this Code section or any other provisions of this chapter.

(h) The commission may prepare and distribute to licensees under this chapter educational material deemed of assistance in the conduct of their business. The commission may prepare and distribute to the public educational material deemed of assistance to consumers engaging in business in real estate transactions with persons licensed under this chapter.

(i) The commission, through its rules and regulations, shall establish standards for the approval of schools and instructors to offer the

education courses required by this chapter. Each approved school shall comply with Code Sections 43-40-15 through 43-40-31. Each approved school shall designate an individual approved by the commission to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. An approved school shall authorize its director to bind the school to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” The commission, through its rules and regulations, shall establish standards for the offering of the prelicense education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. The commission, through its rules and regulations, may establish standards for the offering of continuing education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. (Ga. L. 1925, p. 325, § 6; Code 1933, § 84-1409; Ga. L. 1949, p. 943, § 3; Ga. L. 1950, p. 278, § 2; Ga. L. 1965, p. 629, § 5; Ga. L. 1968, p. 277, § 2; Code 1933, § 84-1411, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 375, § 1; Ga. L. 1979, p. 1203, § 2; Ga. L. 1981, p. 1311, § 4; Ga. L. 1982, p. 1001, §§ 3, 10; Ga. L. 1984, p. 844, §§ 1, 2; Ga. L. 1985, p. 360, § 3; Ga. L. 1986, p. 364, §§ 1, 2; Ga. L. 1987, p. 252, § 1; Ga. L. 1990, p. 650, § 2; Ga. L. 1991, p. 642, § 1; Ga. L. 1996, p. 6, § 43; Ga. L. 1996, p. 194, § 4; Ga. L. 1997, p. 410, § 1; Ga. L. 2006, p. 792, §§ 5, 6/SB 547; Ga. L. 2007, p. 483, § 5/SB 114; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2012, p. 1099, § 8/SB 365.)

<p>The 2012 amendment, effective July 1, 2012, substituted “maintaining a license in active status for at least three of the five years immediately preceding such</p>	<p>examination” for “serving at least two years of active licensure” in paragraph (c)(6).</p>
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43-40-15. Grant, revocation, or suspension of licenses; other sanctions; surrender or lapse; conviction; noncompliance with child support order; borrowers in default.

(a) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. The commission may deny a license to a corporation, limited liability company, or partnership if a stockholder, member, or partner or any combination thereof which owns more than a 20 percent interest therein does not bear a good reputation for honesty, trustworthiness, and integrity; has been convicted of any of the crimes enumerated in subsection (b) of this Code

section; or has been disciplined by any legally constituted regulatory agency for violating a law regulating the sale of real estate.

(b)(1) As used in this Code section, the term:

(A) “Conviction” means a finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to first offender treatment without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving moral turpitude.

(B) “Felony” means any offense committed:

(i) Within this state and deemed a felony under the laws of this state or under the laws of the United States; or

(ii) In another state and deemed a felony under the laws of that state or the laws of the United States.

(1.1) No person who has a conviction shall be eligible to become an applicant for a license or an approval authorized by this chapter unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction, provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided, further, that if such individual has a single conviction, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval.

(1.2) A person who has a conviction in a court of competent jurisdiction of this state or any other state shall be eligible to become an applicant for a licensure or an approval authorized by this chapter only if:

(A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval, provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided, further, that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sexual offense, a probation violation, or a crime involving moral turpitude are pending against the person; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(2) Where an applicant for any license or approval authorized by this chapter has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other like offense or offenses or has been convicted of a felony, a sexual offense, a probation violation, or a crime involving moral turpitude and has been convicted thereof in a court of competent jurisdiction of this state or any other state such conviction in itself may be sufficient ground for refusal of a license or approval authorized by this chapter. An applicant for licensure as an associate broker or a broker who has been convicted of any offense enumerated in this paragraph may be licensed by the commission as an associate broker or a broker only if:

(A) At least ten years have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;

(B) No criminal charges are pending against the applicant; and

(C) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(c) Where an applicant or licensee has been found guilty of a violation of the federal fair housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court of competent jurisdiction and after any appeal of such conviction is concluded, such conviction may in itself be a sufficient ground for refusal of a license or the imposition of any sanction permitted by this chapter.

(d) Where an applicant or licensee has made a false statement of material fact on his or her application or caused to be submitted or been a party to preparing or submitting any falsified application to the commission, such action may, in itself, be a sufficient ground for the refusal, suspension, or revocation of the license.

(e) Grounds for suspension or revocation of a license, as provided for by this chapter, shall also be grounds for refusal to grant a license.

(f) The conduct provided for in subsections (a), (b), (c), (d), and (h) of this Code section which relates to the denial of a real estate license to an applicant shall also be grounds for imposition of any sanction permitted by this chapter when the conduct is that of a licensee.

(g) Whenever the commission initiates an investigation as permitted by Code Section 43-40-27 to determine whether a licensee has violated any provision of this chapter or its rules and regulations and such licensee has:

(1) Surrendered or voluntarily surrenders the license to the commission;

(2) Allowed or allows the license to lapse due to failure to meet educational requirements provided by law; or

(3) Allowed or allows the license to lapse due to failure to pay any required fees,

the commission may issue an order revoking such licensee's license. The order shall be effective ten days after the order is served on the licensee unless the licensee makes a written request for a hearing before the commission, in which event, the commission shall file a notice of hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Service shall be accomplished as provided for in Code Section 43-40-26.

(h) Whenever any occupational licensing body of this state or any other state has disciplined the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license, such discipline, lapsing, or surrender in itself may be a sufficient ground for refusal of a license. Whenever any occupational licensing body of this state or any other state has revoked the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license, the commission may issue an associate broker's or a broker's license only if:

(1) At least ten years have passed since the date that the applicant's occupational license was revoked or surrendered;

(2) No criminal charges are pending against the applicant at the time of application; and

(3) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustwor-

thiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(i) Whenever any licensee is convicted of any offense enumerated in subsection (b) of this Code section, the licensee shall immediately notify the commission of that conviction. The licensee's license shall automatically be revoked 60 days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that 60 day period. Following any such hearing requested pursuant to this subsection, the commission in its discretion may impose upon that licensee any sanction permitted by this chapter.

(j) Whenever the commission revokes or suspends the license of a community association manager, a salesperson, an associate broker, or a broker, then any school or instructor approval which such licensee holds shall also be revoked or suspended. Whenever a licensee surrenders a real estate license as provided for in subsection (g) of this Code section, any school or instructor approval which such licensee holds shall also be subject to the provisions of subsection (g) of this Code section.

(k) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in those Code sections shall be the only such procedures required under this chapter.

(l) Where an applicant or licensee has been found to be a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295, such status shall be sufficient grounds for refusal of a license or suspension of a license. In such cases, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this chapter.

(m) Where the commission has previously sanctioned any applicant for a license under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such sanction may in itself be a sufficient ground for refusing the license. (Ga. L. 1925, p. 325, § 1; Ga. L. 1931, p. 231, § 1; Code 1933, § 84-1409; Ga. L. 1943, p. 572, § 1; Ga. L. 1949, p. 943, § 3; Ga. L. 1950, p. 278, § 2; Ga. L. 1965, p. 629, § 5; Ga. L. 1968, p. 277, § 2; Code 1933, § 84-1410, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1978, p. 231, § 2; Ga. L. 1981, p. 1311, § 3; Ga. L. 1983, p. 1411, § 2; Ga. L. 1984, p. 844, § 5; Ga. L. 1986, p. 364, §§ 4, 5, 6; Ga. L. 1989, p. 1619, § 5; Ga. L. 1990, p. 8, § 43; Ga. L. 1990, p. 650, § 4; Ga. L. 1991, p. 94, § 43; Ga. L. 1991, p. 642, §§ 4, 5; Ga. L. 1993, p. 123, § 54; Ga. L. 1994, p. 1168, § 2; Ga. L. 1995, p. 1216, § 6; Ga. L. 1996, p. 6, § 43; Ga. L. 1996, p. 194, § 8; Ga. L. 1996, p. 453, § 15; Ga. L. 1998, p. 1094,

§ 12; Ga. L. 2000, p. 1527, § 16; Ga. L. 2003, p. 370, § 11; Ga. L. 2007, p. 483, § 7/SB 114; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2012, p. 1099, § 9/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (a), substituted “disciplined” for “sanctioned” near the end; substituted the present provisions of subparagraph (b)(1)(B) for the former provisions, which read “‘Felony’ includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.”; in paragraph (b)(1.1), substituted a comma for a semicolon following “conviction” and added “and” preceding “provided”; substituted “this state or any other state” for “this or any other state, district, or territory of the United States, or of a foreign country” in paragraphs (b)(1.2) and (b)(2); in subparagraph (b)(1.2)(A), substituted a comma for a semicolon after “licensure or approval”, and inserted “and” preceding

“provided, further.”; substituted “sexual offense” for “sex offense” in subparagraph (b)(1.2)(B) and paragraph (b)(2); rewrote the undesignated language at the end of subsection (g); in subsection (h), substituted “this state or any other state has disciplined” for “this state, any other state, or any foreign country has sanctioned”, substituted “this state or any other state” for “this state, any other state, or foreign country” three additional times, and substituted “such discipline” for “such sanction”; substituted “shall immediately notify” for “must immediately notify” near the beginning of subsection (i); and substituted “shall be sufficient grounds” for “is sufficient grounds” in the first sentences of subsections (k) and (l), respectively.

43-40-22. Real estate education, research, and recovery fund; revocation of license upon court order for payment from fund; subrogation.

(a) The commission is authorized and directed to establish and maintain a real estate education, research, and recovery fund. All funds in the real estate recovery fund established by Ga. L. 1973, p. 100, shall be transferred to and utilized through the real estate education, research, and recovery fund.

(b) The commission shall maintain a minimum balance of \$1 million in the real estate education, research, and recovery fund from which any person, except bonding companies when they are not principals in a real estate transaction, aggrieved by an act, representation, transaction, or conduct of a licensee which is in violation of this chapter or of the rules and regulations of the commission promulgated pursuant thereto, may recover, by order of any court having competent jurisdiction, actual or compensatory damages, not including interests and costs sustained by the act, representation, transaction, or conduct, provided that nothing shall be construed to obligate the fund for more than \$25,000.00 per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction. In addition:

(1) The liability of the fund for the acts of a licensee, when acting as such, is terminated upon the issuance of court orders authorizing

payments from the fund for judgments, or any unsatisfied portion of judgments, in an aggregate amount of \$75,000.00 on behalf of such licensee;

(2) A licensee acting as a principal or agent in a real estate transaction has no claim against the fund; and

(3) No person who establishes a proper claim or claims under this Code section shall ever obtain more than \$25,000.00 from the fund.

(c) When any person makes application for an original license to practice as a licensee, that person shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit in the education, research, and recovery fund.

(d)(1) No action for a judgment which subsequently results in an order for collection from the real estate education, research, and recovery fund shall be started later than two years from the accrual of the cause of action thereon. The commission shall have the right to intervene in and defend any such action.

(2) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee for any act, representation, transaction, or conduct which is in violation of this chapter, or of the regulations promulgated pursuant thereto, which act occurred on or after July 1, 1973, the aggrieved person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon 30 days' written notice to the commission, may apply to the court for an order directing payment out of the real estate education, research, and recovery fund of the amount unpaid upon the judgment, subject to the limitations stated in this Code section. The commission shall have the right to intervene in and object to such verified claim on the issue of whether or not the claim was in violation of this chapter or of the rules and regulations of the commission promulgated pursuant thereto.

(3) The court shall proceed upon such application in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show that such person:

(A) At the time of the cause of action, was not a spouse of the judgment debtor; or a parent, sibling, or child of the judgment debtor or the judgment debtor's spouse; or the personal representative of such person or persons;

(B) Has complied with all the requirements of this Code section;

(C) Has obtained a judgment, as set out in paragraph (2) of this subsection, stating the amount thereof and the amount owing

thereon at the date of the application; and that, in such action, the aggrieved person had joined any and all bonding companies which issued corporate surety bonds to the judgment debtors as principals and all other necessary parties;

(D) Has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale of them or of such of them as were found, under such execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due to the judgment after application thereon of the amount realized;

(E) Has caused the judgment debtor to make discovery under oath concerning the judgment debtor's property, in accordance with Chapter 11 of Title 9, the "Georgia Civil Practice Act";

(F) Has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(G) Has discovered by such search no personal or real property or other assets liable to be sold or applied or that certain of them, being described, owned by the judgment debtor and liable to be so applied have been discovered and that the aggrieved person has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and

(H) Has applied the following items, if any, as recovered by the aggrieved person, to the actual or compensatory damages awarded by the court:

(i) Any amount recovered from the judgment debtor or debtors;

(ii) Any amount recovered from the bonding company or companies; or

(iii) Any amount recovered in out-of-court settlements as to particular defendants.

(4) Whenever the aggrieved person satisfies the court that it is not practical to comply with one or more of the requirements enumerated in subparagraphs (D), (E), (F), (G), and (H) of paragraph (3) of this

subsection and that the aggrieved person has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may, in its discretion, dispense with the necessity for complying with such requirements.

(5) The court shall make an order directed to the commission requiring payment from the real estate education, research, and recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this Code section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by paragraph (3) of this subsection and is satisfied that the aggrieved person has fully pursued and exhausted all remedies available to him or her for recovering the amount awarded by the judgment of the court.

(6) Should the commission pay from the real estate education, research, and recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of such licensee shall be automatically revoked upon the issuance of a court order authorizing payment from the real estate education, research, and recovery fund. If such license is that of a firm, the license of the qualifying broker of the firm shall automatically be revoked upon the issuance of a court order authorizing payment from the real estate education, research, and recovery fund. No such licensee shall be eligible to receive a new license until such licensee has repaid in full, plus interest at the judgment rate in accordance with Code Section 7-4-12, the amount paid from the real estate education, research, and recovery fund on such licensee's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(7) If, at any time, the money deposited in the real estate education, research, and recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the real estate education, research, and recovery fund, satisfy such unpaid claims or portions thereof in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent a year.

(e) The sums received by the commission pursuant to any provisions of this Code section shall be deposited into the state treasury and held in a special fund to be known as the "Real Estate Education, Research, and Recovery Fund" and shall be held by the commission in trust for carrying out the purposes of this Code section. These funds may be invested in any investments which are legal for domestic insurance

companies under Articles 1 and 3 of Chapter 11 of Title 33, and the interest from these investments shall be deposited to the credit of the real estate education, research, and recovery fund and shall be available for the same purposes as all other money deposited in the real estate education, research, and recovery fund.

(f) It shall be unlawful for any person or his agent to file with the commission any notice, statement, or other document required under this Code section which is false, untrue, or contains any material misstatement of fact and shall constitute a misdemeanor.

(g) When the commission receives notice, as provided in subsection (d) of this Code section, the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it may deem appropriate on behalf and in the name of the defendant and take recourse through any appropriate method of review on behalf of and in the name of the defendant.

(h) When, upon the order of the court, the commission has paid from the real estate education, research, and recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all his right, title, and interest in the judgment to the commission before any payment is made from the fund, and any amount and interest so recovered by the commission on the judgment shall be deposited to the fund. If the total amount collected on the judgment by the commission exceeds the amount paid from the fund to the original judgment creditor plus interest and the cost of collection, the commission may elect to pay any overage collected to the original judgment creditor or reassign the remaining interest in the judgment to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the fund to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission attempting to collect assigned judgments shall be paid from the fund.

(i) The failure of an aggrieved person to comply with all of the provisions of this Code section shall constitute a waiver of any rights under this Code section.

(j) The commission, in its discretion, may use any and all funds from new licensee payments to the real estate education, research, and recovery fund or from accrued interest earned on the fund for the purpose of helping to underwrite the cost of developing courses, conducting seminars, conducting research projects on matters affecting real estate brokerage, publishing and distributing educational materials, or other education and research programs for the benefit of licensees and the public as the commission may approve in accordance

with the provisions of this chapter and its rules and regulations; provided, however, that the commission shall not expend or commit sums for educational or research purposes in such amounts as would cause the real estate education, research, and recovery fund to be reduced to an amount less than \$1 million.

(k) In addition to the license fees provided for in this chapter, the commission, in its discretion and based upon the need to ensure that a minimum balance of \$1 million is maintained in the real estate education, research, and recovery fund, may assess each licensee, only upon renewal of the license, an amount not to exceed \$30.00 per year. (Code 1933, § 84-1424, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1979, p. 1203, § 4; Ga. L. 1981, p. 1311, § 7; Ga. L. 1982, p. 1001, §§ 8, 15; Ga. L. 1985, p. 360, §§ 11-13; Ga. L. 1986, p. 10, § 43; Ga. L. 1988, p. 1395, § 1; Ga. L. 1989, p. 1619, § 7; Ga. L. 1993, p. 123, § 57; Ga. L. 1999, p. 592, § 18; Ga. L. 2000, p. 1527, § 20; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 1099, §§ 10, 11/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (b), substituted “\$25,000.00” for “\$15,000.00” near the end of the introductory paragraph and in paragraph (b)(3), and substituted “\$75,000.00” for “\$45,000.00” near the end of paragraph (b)(1); deleted the former second sentence of paragraph (d)(1), which read: “When any aggrieved person commences action for a judgment which may result in collection from the real

estate education, research, and recovery fund, the aggrieved person shall notify the commission in writing, by certified mail or statutory overnight delivery, return receipt requested, to this effect at the time of the commencement of such action.”; in paragraph (d)(2), substituted “30 days” for “ten days” near the middle, and added the last sentence; and inserted “or her” near the end of paragraph (d)(5).

43-40-25. Violations by licensees, schools, and instructors; sanctions; unfair trade practices.

(a) In accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” whenever a license, a school approval, or an instructor approval has been obtained by false or fraudulent representation, or whenever a licensee, an approved school, or an approved instructor has been found guilty of a violation of this chapter, of the rules and regulations promulgated by the commission, or of any unfair trade practices, including, but not limited to, those listed in this Code section, the commission shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a reprimand;
- (3) Suspend any license or approval for a definite period of time or for an indefinite period of time in connection with any condition that may be attached to the restoration of the license or approval;

- (4) Revoke any license or approval;
- (5) Revoke the license of a broker, qualifying broker, or associate broker and simultaneously issue such licensee a salesperson's license;
- (6) Impose on a licensee, applicant, approved school, or approved instructor monetary assessments in an amount necessary to reimburse the commission for the administrative, investigative, and legal costs and expenses incurred by the commission in conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";
- (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as the parties may agree;
- (8) Require completion of a course of study in real estate brokerage or instruction;
- (9) Require the filing of periodic reports by an independent accountant on a real estate broker's designated trust account; or
- (10) Limit or restrict any license or approval as the commission deems necessary for the protection of the public.

Any action taken by the commission pursuant to this subsection may, at its discretion, be construed as a "disciplinary sanction" or "sanction" as such terms are used in this chapter.

(b) Licensees shall not engage in any of the following unfair trade practices:

- (1) Because of race, color, religion, sex, disability, familial status, or national origin:
 - (A) Refusing to sell or rent after the making of a bona fide offer, or refusing to negotiate for the sale or rental of, or otherwise making unavailable or denying, real estate to any person;
 - (B) Discriminating against any person in the terms, conditions, or privileges of sale or rental of real estate or in the provision of services or facilities in connection therewith;
 - (C) Making, printing, or publishing or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of real estate, that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination;
 - (D) Representing to any person that any real estate is not available for inspection, sale, or rental when such real estate is in fact so available; or

- (E) Representing explicitly or implicitly that a change has or will or may occur in a block, neighborhood, or area in order to induce or discourage the listing, purchasing, selling, or renting of real estate;
- (2) Intentionally advertising material which is misleading or inaccurate or which in any way misrepresents any property, terms, values, policies, or services of the business conducted;
- (3) Failing to account for and remit any money coming into the licensee's possession which belongs to others;
- (4) Commingling the money or other property of the licensee's principals with the licensee's own;
- (5) Failing to maintain and deposit in a separate, federally insured checking account all money received by said broker acting in said capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in said funds have agreed otherwise in writing;
- (6) Failing to disclose in writing to a principal in a real estate transaction any of the following:
- (A) The receipt of a fee, rebate, or other thing of value on expenditures made on behalf of the principal for which the principal is reimbursing the licensee;
 - (B) The payment to another broker of a commission, fee, or other thing of value for the referral of the principal for brokerage or relocation services; or
 - (C) The receipt of anything of value for the referral of any service or product in a real estate transaction to a principal;
- (7) Representing or attempting to represent a real estate broker, other than the broker holding the licensee's license, without the express knowledge and consent of the broker holding the licensee's license;
- (8) Accepting a commission or other valuable consideration by a licensee from anyone other than the broker holding that licensee's license without the consent of that broker;
- (9) Acting in the dual capacity of agent and undisclosed principal in any transaction;
- (10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;
- (11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or the owner's authorized

agent and failing to remove such sign within ten days after the expiration of listing;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(13) Inducing any party to a contract of sale or lease, or a brokerage agreement to break such contract or brokerage agreement for the purpose of substituting in lieu thereof any other contract or brokerage agreement with another principal;

(14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor, a purchaser, or a tenant if the licensee knows that such owner or lessor has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or that such purchaser or tenant has a written outstanding exclusive brokerage agreement with another broker, unless the outstanding listing or brokerage agreement provides that the licensee holding such agreement will not provide negotiation services to the client;

(15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant regarding a listing, lease, rental, or purchase price is an appraisal unless such licensee holds an appraiser classification in accordance with Chapter 39A of this title;

(16) Performing or attempting to perform any of the acts of a licensee on property located in another state without first having been properly licensed in that state or otherwise having complied fully with that state's laws regarding real estate brokerage;

(17) Paying a commission or compensation to any person for performing the services of a real estate licensee who has not first secured the appropriate license under this chapter or is not cooperating as a nonresident who is licensed in such nonresident's state or foreign country of residence, provided that nothing contained in this subsection or any other provision of this Code section shall be construed so as to prohibit the payment of earned commissions:

(A) To the estate or heirs of a deceased real estate licensee when such deceased real estate licensee had a valid Georgia real estate license in effect at the time the commission was earned and at the time of such person's death;

(B) To a citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Georgia licensee paying such commission or compensation obtains and maintains reasonable written evidence that the payee is a citizen of

said other country, is not a resident of this country, and is in the business of brokering real estate in said other country; or

(C) By the brokerage firm holding a licensee's license to an unlicensed firm in which an individual licensee affiliated with the brokerage firm owns more than a 20 percent interest provided:

(i) Such individual licensee earned the commission on behalf of the brokerage firm;

(ii) Such unlicensed firm does not perform real estate brokerage activity;

(iii) The affiliated licensee and the brokerage firm have a written agreement authorizing the payment to the unlicensed firm; and

(iv) The brokerage firm obtains and retains written evidence that the affiliated licensee owns more than a 20 percent interest in the unlicensed firm to which the compensation will be paid;

(18) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of said agreement with the principal;

(19) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(20) Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller or failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed; the broker shall retain true copies of such statements in the broker's files;

(21) Making any substantial misrepresentations;

(22) Acting for more than one party in a transaction without the express written consent of all parties to the transaction;

(23) Failure of an associate broker, salesperson, or community association manager to place, as soon after receipt as is practicably possible, in the custody of the broker holding the licensee's license any deposit money or other money or funds entrusted to the licensee by any person dealing with the licensee as the representative of the licensee's licensed broker;

(24) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose

of casting a cloud upon the title to real estate when no valid claim under said listing contract exists;

(25) Having demonstrated incompetency to act as a real estate licensee in such manner as to safeguard the interest of the public or any other conduct whether of the same or a different character than heretofore specified which constitutes dishonest dealing;

(26) Obtaining a brokerage agreement, a sales contract, or a lease from any owner, purchaser, or tenant while knowing or having reason to believe that another broker has an exclusive brokerage agreement with such owner, purchaser, or tenant, unless the licensee has written permission from the broker having the first exclusive brokerage agreement; provided, however, that notwithstanding the provisions of this paragraph, a licensee shall be permitted to present a proposal or bid for community association management if requested to do so in writing from a community association board of directors;

(27) Failing to keep for a period of three years a true and correct copy of all sales contracts, closing statements, any offer or other document that resulted in the depositing of trust funds, accounting records related to the maintenance of any trust account required by this chapter, and other documents relating to real estate closings or transactions or failing to produce such documents at the reasonable request of the commission or any of its agents for their inspection;

(28) Being or becoming a party to any falsification of any portion of any contract or other document involved in any real estate transaction;

(29) Failing to obtain the written agreement of the parties indicating to whom the broker shall pay any interest earned on trust funds deposited into an interest-bearing checking account prior to depositing those funds into such account;

(30) Failing to disclose in a timely manner to all parties in a real estate transaction any agency relationship that the licensee may have with any of the parties;

(31) Attempting to perform any act authorized by this chapter to be performed only by a broker, associate broker, or salesperson while licensed as a community association manager;

(32) Attempting to sell, lease, or exchange the property of any member of a community association to which a licensee is providing community association management services without the express written consent of that association to do so;

(33) Failure to deliver to a community association terminating a management contract within 30 days of the termination, or within such other time period as the management contract shall provide:

(A) A complete and accurate record of all transactions and funds handled during the period of the contract and not previously accounted for;

(B) All records and documents received from the community association or received on the association's behalf; and

(C) Any funds held on behalf of the community association;

(34) Failure to deliver to a property owner terminating a management contract within 30 days of the termination, or within such other time period as the management contract shall provide:

(A) A complete and accurate record of all transactions and funds handled during the period of the contract and not previously accounted for;

(B) All records and documents received from the property owner or received on the owner's behalf; and

(C) Any funds held on behalf of the property owner;

(35) Inducing any person to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent; or

(36) Failing to obtain a person's written agreement to refer that person to another licensed broker for brokerage or relocation services and to inform such person being referred whether or not the licensee will receive a valuable consideration for such referral.

(c) When a licensee has previously been sanctioned by the commission or disciplined by any other state's real estate brokerage licensing authority, the commission may consider any such prior sanctions or disciplinary actions by another state's real estate brokerage licensing authority in determining the severity of a new sanction which may be imposed upon a finding that the licensee has committed an unfair trade practice, that the licensee has violated any provision of this chapter, or that the licensee has violated any of the rules and regulations of the commission. The failure of a licensee to comply with or to obey a final order of the commission may be cause for suspension or revocation of the individual's license after opportunity for a hearing.

(d) Whenever a licensee acts in a real estate transaction as a principal or as an officer, employee, or member of a firm or any other entity acting as a principal, the commission may impose any sanction permitted by this chapter if the licensee commits any unfair trade practice enumerated in this Code section or violates any other provision of this chapter or any rules and regulations adopted pursuant to this chapter in such a transaction.

(e) Whenever a community association manager, a salesperson, or an associate broker violates any provision of this chapter or any rules and regulations adopted pursuant to this chapter by performing any duty or act of a broker enumerated in this chapter or any rules and regulations adopted pursuant to this chapter either with the proper delegation of that duty or act by the broker or without the broker's authorization, the commission may impose any sanction permitted under this chapter on the license of such community association manager, salesperson, or associate broker. (Ga. L. 1925, p. 325, §§ 11, 12; Ga. L. 1929, p. 316, § 32; Code 1933, §§ 84-1417, 84-1418; Ga. L. 1949, p. 943, § 4; Ga. L. 1965, p. 629, § 9; Code 1933, § 84-1421, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 379, § 4; Ga. L. 1977, p. 691, § 1; Ga. L. 1978, p. 231, §§ 5-7; Ga. L. 1980, p. 1398, § 8; Ga. L. 1983, p. 1411, § 5; Ga. L. 1984, p. 844, § 9; Ga. L. 1985, p. 360, §§ 15, 16; Ga. L. 1986, p. 10, § 43; Ga. L. 1986, p. 364, §§ 9, 10, 11, 12; Ga. L. 1987, p. 3, § 43; Ga. L. 1987, p. 252, §§ 7, 8; Ga. L. 1989, p. 1619, § 8; Ga. L. 1990, p. 650, §§ 5-8; Ga. L. 1991, p. 642, § 7; Ga. L. 1992, p. 1402, § 2; Ga. L. 1992, p. 1541, §§ 2, 3; Ga. L. 1993, p. 123, § 58; Ga. L. 1993, p. 376, § 2; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 194, § 12; Ga. L. 1998, p. 196, § 7; Ga. L. 2000, p. 1527, § 21; Ga. L. 2003, p. 370, § 14; Ga. L. 2004, p. 398, § 1; Ga. L. 2006, p. 792, § 8/SB 547; Ga. L. 2007, p. 483, § 9/SB 114; Ga. L. 2009, p. 319, § 1/HB 315; Ga. L. 2011, p. 415, § 2/HB 53; Ga. L. 2011, p. 613, § 3/HB 423; Ga. L. 2012, p. 1099, §§ 12, 13/SB 365.)

The 2012 amendment, effective July 1, 2012, in the introductory paragraph of subsection (a), substituted a comma for a semicolon following "representation", deleted "or" following "violation of this chapter," inserted a comma following "limited to", and substituted a comma for a semicolon following "Code section"; substituted "approved school, or approved instructor"

for "school approval, or instructor approval" in paragraph (a)(6); added the undesignated paragraph following paragraph (a)(10); and, in subsection (c), in the first sentence, inserted "disciplined" near the beginning, and inserted "disciplinary actions by another state's real estate brokerage licensing authority" near the middle.

43-40-25.2. Alternative disciplinary procedures; citations.

(a) It is the intent of the General Assembly to provide the commission with measures to use as alternatives to the sanctions provided for in subsection (a) of Code Section 43-40-25. The citation and letter of findings provided for in this Code section shall not be construed as a disciplinary sanction.

(b) Whenever the evidence gathered in an investigation reveals an apparent violation of this chapter or of the rules and regulations promulgated by the commission or the apparent commission of any unfair trade practice by a licensee, the commission, in its discretion, may:

(1) Initiate the process for the imposition of sanctions, as provided for in subsection (a) of Code Section 43-40-25 and in accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50;_

(2) Issue a citation to the licensee. Such citation, which shall be served personally or by mail, shall give notice to the licensee of the alleged violation or violations of this chapter or commission rules or alleged unfair trade practice or practices and inform the licensee of the opportunity to request a contested case hearing to be held in accordance with the procedures established for such hearings by Chapter 13 of Title 50. A citation issued by the commission may include an order to complete a course of study in real estate brokerage or instruction; to file periodic reports by an independent accountant on a real estate broker's designated trust account; or to pay a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations, with fines for multiple violations limited to \$5,000.00 in any one citation, or a combination of the above. If the licensee fails to request a hearing within 30 days of the date of service of the citation, the order contained in the citation shall be final. The failure of a licensee to comply with a final order contained in a citation may be cause for the imposition of a sanction on such person's license, after notice and opportunity for a hearing; or

(3) Issue a letter of findings to the licensee if the alleged violation appears to have done no harm to a third party or to the public. Such letter of findings, which shall be served personally or by mail, shall give notice to the licensee of the alleged violation or violations of this chapter or commission rules or alleged unfair trade practice or practices. A letter of findings shall be confidential and shall not appear on the license history of a licensee. A letter of findings shall not be subject to a subpoena in a civil action, shall not constitute a public record or be available for inspection by the public, and shall not be disclosed to any person or agency, except as provided in subsection (d) of Code Section 43-40-27.

(c) The commission is authorized to promulgate rules and regulations to implement this Code section. Such rules may limit the provisions of this chapter and of its rules and regulations and unfair trade practices which may be the basis for the issuance of a citation or a letter of findings. (Code 1981, § 43-40-25.2, enacted by Ga. L. 1999, p. 715, § 6; Ga. L. 2012, p. 1099, § 14/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (a), in the first sentence, substituted "measures to use as alternatives" for "a disciplinary tool which is an alternative", in the second sentence, inserted "and letter of findings" near the

beginning, and inserted "disciplinary" near the end; in subsection (b), divided the previous provisions into introductory language and paragraphs (b)(1) and (b)(2), and added a colon following "discretion, may" at the end of the introductory lan-

guage; in paragraph (b)(1), substituted “Initiate” for “initiate” at the beginning, and substituted a semicolon for “, or” at the end; in paragraph (b)(2), substituted “Issue” for “issue” at the beginning, and

substituted “; or” for a period at the end; added paragraph (b)(3); and added “or a letter of findings” at the end of subsection (c).

CHAPTER 41

RESIDENTIAL AND GENERAL CONTRACTORS

Sec.
43-41-18. Certain military specialties or certifications entitle persons to obtain certain professional licenses; definitions.

Sec.
43-41-19. Reciprocal professional licensing of military spouses.

43-41-18. Certain military specialties or certifications entitle persons to obtain certain professional licenses; definitions.

- (a) As used in this Code section, the term:
- (1) “Discharge” means an honorable discharge or a general discharge from active military service. Such term shall not mean a discharge under other than honorable conditions, a bad conduct discharge, or a dishonorable discharge.

(2) “Military” means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.
- (b) A committee composed of the division director, members of the Governor’s Office of Workforce Development, and members of the licensing board representing the profession of residential-light commercial contracting shall determine the military specialties or certifications the training, experience, and testing for which substantially meet or exceed the requirements to obtain a residential-light commercial contractor’s license. The Governor shall designate a chairperson from among the membership of the committee.
- (c) Any current or former member of the military may apply to the licensing board for the immediate issuance of a license or certification based upon his or her having obtained a military specialty or certification the training or experience for which substantially meet or exceed the requirements to obtain a residential-light commercial contractor’s license. In order to qualify under this subsection, an applicant shall make application not later than 180 days after his or her discharge. Such application shall be in such form and shall require such documen-

tation as the division director shall determine. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the license, and such division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees. (Code 1981, § 43-41-18, enacted by Ga. L. 2013, p. 26, § 2/HB 188.)

Effective date. — This Code section became effective July 1, 2013.

43-41-19. Reciprocal professional licensing of military spouses.

(a) As used in this Code section, the term “military” means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.

(b) The spouse of any member of the military who resides in this state due to the assignment of the military spouse and who holds a license or certification from another state the training, experience, and testing for which substantially meet or exceed the Georgia requirements to obtain a license or certification as a residential-light commercial contractor shall be entitled to apply to the licensing board for the immediate issuance of such a license. In order to qualify under this subsection, an applicant shall make application not later than 180 days after his or her relocation to the State of Georgia. Such application shall be in such form and shall require such documentation as the division director shall determine. A committee composed of the division director, members of the Governor’s Office of Workforce Development, and members of the relevant divisions of the licensing board representing the profession for which the applicant is seeking a license, with a chairperson appointed by the Governor from among the membership of the committee, shall determine whether the training, experience, and testing for obtaining a license in the relevant foreign state substantially meet or exceed the requirements to obtain the professional licenses provided in this state. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the license, and such division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees. (Code 1981, § 43-41-19, enacted by Ga. L. 2013, p. 26, § 2/HB 188.)

Effective date. — This Code section became effective July 1, 2013.

CHAPTER 45

PERSONS ENGAGED IN STRUCTURAL PEST CONTROL

43-45-3. Creation of commission; composition; vacancies; number of members who may represent a single business entity.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 50

VETERINARIANS AND VETERINARY TECHNICIANS

Article 3	Sec.
Licensing and Registration	sults; admission for reexamination.
PART 1	PART 2
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ARTICLE 2

STATE BOARD OF VETERINARY MEDICINE

Cross references. — Veterinarians' privilege, § 24-12-31.

43-50-20. (For effective date, see note.) Creation of board; members; qualifications; vacancies; expenses; meetings; officers.

Delayed effective date. — Ga. L. amendment by § 2-1 of that Act becomes 2003, p. 615, § 3-1, provides that the 2003 effective only upon the effective date of an

appropriation of funds for the specific purposes of Part II of that Act as expressed in a line item making specific reference to full funding of the Act in an Appropriations Act enacted by the General Assembly. Funds were not appropriated at the

2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013 session of the General Assembly. This Code section, as set out in the bound volume, does not reflect the amendment by § 2-1 of that Act, owing to the delayed effective date.

ARTICLE 3

LICENSING AND REGISTRATION

PART 1

VETERINARIANS

43-50-31. Application for license; qualifications; recordation of license and issuance of certificate of registration.

(a) Any person desiring a license to practice veterinary medicine in this state shall make application to the board. The application shall include evidence, satisfactory to the board, that:

(1) The applicant has attained the age of 18;

(2) The applicant is of good moral character;

(3) The applicant is a graduate of an accredited college or school of veterinary medicine or possesses an ECFVG certificate or its substantial equivalent;

(4) The applicant has passed a board approved examination; provided, however, that the board may provide by rule or regulation for a waiver of any part of such examination for veterinarians who are licensed as such by another state and who are in good standing therewith; and

(5) The applicant meets such other qualifications or provides such other information as the board may require by rule.

(b) The application shall be accompanied by a fee in the amount established by the board.

(c) The division director shall record the new licenses and issue a certificate of registration to the new licensees. (Ga. L. 1908, p. 88, §§ 3, 4; Civil Code 1910, §§ 2059, 2060; Code 1933, §§ 84-1504, 84-1505; Ga. L. 1950, p. 254, § 1; Ga. L. 1962, p. 543, §§ 2, 3; Code 1933, § 84-1506, enacted by Ga. L. 1965, p. 92, § 1; Code 1981, § 43-50-23; Ga. L. 1982, p. 1065, § 4; Ga. L. 1988, p. 1589, § 2; Code 1981, § 43-50-31 as redesignated by Ga. L. 2003, p. 615, § 1-1; Ga. L. 2010, p. 266, § 45/SB 195; Ga. L. 2012, p. 678, § 1/HB 409.)

The 2012 amendment, effective July 1, 2012, in subsection (a), deleted the proviso at the end of paragraph (a)(3), which read: “provided, however, that a senior veterinary student may, in the discretion of the board, be allowed to sit for the examination during his or her senior year if he or she meets the other qualifications but shall not be issued a license unless and until he or she graduates and;”; added paragraph (a)(4); redesignated former paragraph (a)(4) as present

paragraph (a)(5); and substituted the present provisions of subsection (c) for the former provisions, which read: “If the board determines that an applicant possesses the proper qualifications, it shall admit the applicant to the next examination; provided, however, that the board may provide by rule for waiver of any part of such examination for veterinarians who are licensed as such by another state and who are in good standing therewith.”

43-50-32. Frequency of examinations; notification to applicants of results; admission for reexamination.

(a) The board shall hold at least one license examination during each year and may hold such additional license examinations as are necessary.

(b) After each examination, the division director shall notify each examinee of the result of his or her examination. If an applicant fails a license examination, the applicant may take a subsequent examination upon payment of the registration and examination fees. No person may take the examination more than three times without review and approval by the board. Approval may be provided under such circumstances as the board deems appropriate. (Ga. L. 1908, p. 88, §§ 3, 4; Civil Code 1910, §§ 2059, 2060; Code 1933, §§ 84-1504, 84-1506; Ga. L. 1950, p. 254, § 1; Ga. L. 1962, p. 543, §§ 2, 4; Code 1933, § 84-1507, enacted by Ga. L. 1965, p. 92, § 1; Code 1981, § 43-50-24; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-50-32, as redesignated by Ga. L. 2003, p. 615, § 1-1; Ga. L. 2012, p. 678, § 2/HB 409.)

The 2012 amendment, effective July 1, 2012, in subsection (b), at the end of the first sentence, deleted “, and the board shall issue licenses to the persons successfully completing the examination”, and

deleted the former second sentence, which read: “The division director shall record the new licenses and issue a certificate of registration to the new licensees.”

PART 2

LICENSING AND REGISTRATION GENERALLY

43-50-40. (For effective date, see note.) Renewal of licenses and registrations; reinstatement; waiver of fee; continuing education; inactive status.

Delayed effective date. — Ga. L. 2003, p. 615, § 3-1, provides that the 2003 amendment by § 2-2 of that Act becomes effective only upon the effective date of an

appropriation of funds for purposes of Part II of that Act as expressed in a line item making specific reference to full funding of that Act in an Appropriations

Act enacted by the General Assembly. This Code section, as set out in the bound volume, does not reflect the amendment by § 2-2 of that Act, owing to the delayed

effective date. Funds were not appropriated at the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013 session of the General Assembly.

43-50-44. Exemptions from article.

This article shall not be construed to prohibit:

(1)(A) An employee of the federal, state, or local government or any contractual partner thereof from performing his or her duties relating to animals owned by or on loan to such employer or the control of stray animals; or

(B) Any employee of a public or private college or university from performing his or her duties relating to animals owned by or on loan to such employer;

(2) A person who is a regular student in a veterinary school or school of veterinary technology performing duties or actions assigned by his or her instructors or working under the supervision of a licensed veterinarian;

(3) A person, compensated or otherwise, from performing acceptable livestock management practices, which practices shall include, but not be limited to, castration of food animals, dehorning without the use of prescription drugs or surgical closure of wounds, hoof trimming or shoeing, docking, ear notching, removing needle teeth, testing for pregnancy, implantation of over-the-counter growth implants, implantation of over-the-counter identification devices, artificial insemination, the use of federally approved over-the-counter products, branding, collecting of fluids for genetic identification and classification, semen collection and storage, and the use of ultrasound for collection of production data and similar nondiagnostic purposes;

(4) A person assisting with a nonsurgical fetal delivery in a food animal, provided that no fee is charged;

(5) The actions of a veterinarian currently licensed in another state, province of Canada, or a United States territory in consulting with a licensee of this state but who:

(A) Does not open an office or appoint a place to do business within this state;

(B) Does not print or use letterhead or business cards reflecting in-state addresses;

(C) Does not establish answering services or advertise the existence of a practice address within this state;

(D) Does not practice veterinary medicine as a consultant rendering services directly to the public without the direction of a

licensed veterinarian of this state more than two days per calendar year; and

(E) Is providing services for an organization conducting a public event lasting less than ten days that utilizes animals in need of veterinary examinations, treatments, or oversight to promote the safety and health of the public, the event, and the animal participants; provided, however, that a veterinarian licensed in another state who practices veterinary medicine on animals belonging to residents of this state by communicating directly with such owners and independent of the attending veterinary licensee is not exempt from this state's licensing requirements;

(6) Any merchant or manufacturer selling, at his or her regular place of business, medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases. This shall not be construed to authorize the sale of medicines which must be obtained by a prescription from a pharmacist but shall only include the right to sell those medicines which are classified as proprietary and which are commonly known as over-the-counter medicines;

(7)(A) The owner of an animal or the owner's full-time regular employee caring for and treating the animal belonging to such owner; or

(B) The owner's friend or relative caring for or treating the animal belonging to such owner, provided that no fee is charged and the friend or relative does not solicit, advertise, or regularly engage in providing such care or treatment or administer or dispense prescription drugs without a valid prescription;

(8) The owner, operator, or employee of a licensed kennel, animal shelter, or stable or of a pet-sitting service providing food, shelter, or supervision of an animal or administering prescription drugs pursuant to prescription of a licensed veterinarian or over-the-counter medicine to an animal;

(9) A member of the faculty, a resident, an intern, or a graduate student of an accredited college or school of veterinary medicine or school of veterinary technology performing his or her regular nonclinical functions or a person lecturing or giving instructions or demonstrations at an accredited college or school of veterinary medicine or school of veterinary technology in connection with a continuing education course or seminar;

(10) Any person selling or applying any pesticide, insecticide, or herbicide;

(11) Any person engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(12) Any person performing artificial insemination;

(13) An employee of a licensed veterinarian administering prescribed care to an animal under the appropriate supervision of the veterinarian;

(14) A graduate of a foreign college or school of veterinary medicine who is in the process of obtaining the ECFVG certificate or its substantial equivalent performing duties or actions under the direct supervision of a licensed veterinarian;

(15) The owner of an animal, the owner's employee, or a member of a nationally recognized organization that acknowledges individuals performing embryo transfer or artificial breeding and which organization is approved by the board from:

(A) The nonsurgical removal of an embryo from an animal for the purpose of transplanting such embryo into another female animal, cryopreserving such embryo, or implanting such embryo in an animal, provided that the use of prescription medications in such animals is maintained under the direction of a licensed veterinarian with a valid veterinarian-client-patient relationship; or

(B) The testing and evaluation of semen;

(16) Any other licensed or registered health care provider utilizing his or her special skills so long as the treatment of the animal is under the direction of a licensed veterinarian with a valid veterinary-client-patient relationship;

(17) A person performing soft tissue animal massage or other forms of soft tissue animal manipulation;

(18) A person performing aquaculture or raniculture management practices;

(19) A person implanting electronic identification devices in small companion animals;

(20) An employee or contractual partner of a zoological park or aquarium accredited by the American Zoo and Aquarium Association or other substantially equivalent nationally recognized accrediting agency as determined by the board from performing his or her duties that are approved by a licensed veterinarian and relate to animals owned by or on loan to such zoological park or aquarium; or

(21) Any person lawfully engaged in the art or profession of farriery. (Code 1933, § 84-1503, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1973, p. 260, § 1; Code 1981, § 43-50-32; Ga. L. 1993, p. 700, § 1; Code 1981, § 43-50-44, as redesignated by Ga. L. 2003, p. 615,

§ 1-1; Ga. L. 2006, p. 30, § 2/HB 999; Ga. L. 2012, p. 616, § 1/SB 324.)

The 2012 amendment, effective July 1, 2012, deleted “or” at the end of paragraph (19); substituted “; or” for a period at the end of paragraph (20); and added paragraph (21).

PART 3

VETERINARY TECHNICIANS

43-50-53. Administration of examinations; reexamination; reactivation.

(a) The board shall approve an examination to measure the competence of the applicant to engage in the practice as a veterinary technician and shall set by rule or regulation the score needed to pass any such examination.

(b) If an applicant fails an examination, the applicant may take a subsequent examination upon payment of the registration and examination fees. No person may take the examination more than three times without review and approval by the board under such circumstances as the board deems appropriate.

(c) Any veterinary technician in this state whose certificate of registration has been on inactive status for at least five consecutive years and who desires to reactivate such registration shall be required to take continuing education, pay all fees, and meet all other requirements and board rules or regulations for registration as a veterinary technician. (Code 1981, § 43-50-53, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 3/HB 999; Ga. L. 2012, p. 678, § 3/HB 409.)

The 2012 amendment, effective July 1, 2012, rewrote subsection (a); deleted former subsections (b) and (c); redesignated former subsections (d) and (e) as present subsections (b) and (c), respectively; and deleted the former last sentence of subsection (c), which read: “It shall be the duty of the board to approve study materials that may be used to assist such persons in preparing for any examination.”

ARTICLE 5

FACILITIES AND EQUIPMENT

Delayed effective date. — Ga. L. 2003, p. 615, § 3-1, provides that this article becomes effective only upon the effective date of an appropriation of funds for purposes of this article as expressed in a line item making specific reference to full funding of Ga. L. 2003, p. 615, in an Appropriations Act enacted by the General Assembly. Funds were not appropriated at the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013 session of the General Assembly.

